International Labour Conference
81st Session 1994

Report VI

The role of private employment agencies in the functioning of labour markets

International Labour Office Geneva

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Sixth item on the agenda

International Labour Office Geneva

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INTRODUCTION

At its 254th Session (November 1992), the Governing Body of the International Labour Office decided to place on the agenda of the 81st Session of the International Labour Conference a general discussion item on the role of private employment agencies in the functioning of labour markets. This report has been prepared in pursuance of that decision.

For more than 20 years there has been a desire to see the Conference take up an issue related to that covered in this report. The long process which led to the Governing Body's decision in November 1992 actually began in the mid-1960s. At that time, the appearance and rapid development of temporary work agencies (TWAs) raised the question of whether these agencies were circumventing the provisions of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96). In response to a request for an interpretation submitted by the Government of Sweden, in 1966 the Director-General expressed the opinion that TWAs were fully covered by the definition of fee-charging employment agencies contained in Convention No. 96. Among other things, he pointed out that Article 5 of the Convention providing for exceptions to abolition could be taken to apply in their case. The Committee of Experts on the Application of Conventions and Recommendations took the same line as the Director-General, considering that, for the most part, the activities of TWAs were covered by Convention No. 96. The International Court of Justice, which, under the Constitution of the ILO, is the only body competent to interpret the legal content of international labour standards, has never been seized of this question.

The opinions of the ILO and the Committee of Experts have been deemed inadequate by many countries. These countries, rejecting the opinion that the activities of TWAs amounted to the role of intermediary between employment supply and demand, opted for the opinion of an influential school of jurists believing that TWAs were not intermediaries but in fact the legal employer of workers recruited by them before they were hired out to client firms or those employing temporary workers. Placing TWAs outside the scope of application of provisions on fee-charging employment agencies, an increasing number of countries have adopted legislation aimed at TWAs and authorized their existence despite restrictions laid down by these countries on the activities of fee-charging employment agencies.

Following the trend which could be seen at the level of national legislation, the governments of many member countries, with the support of most workers' representatives, called on the ILO to adopt a standard specifically targeting TWAs' activities which they felt should serve alongside or supplement the existing standard on fee-charging employment agencies.

In 1973, a draft resolution recommending that the ILO take a closer look at the question of TWAs and inviting the Governing Body to place it on the agenda

of one of the subsequent sessions of the Conference was strongly supported at the Conference, but in the absence of a quorum, was not adopted. Between 1973 and 1979, the question of TWAs was many times suggested as an agenda item for the Conference. The in-depth review of international labour standards carried out by the Governing Body between 1976 and 1979 concluded that the question of regulating TWAs could be taken up in new standards. This conclusion was backed by a second Working Party on International Labour Standards which was also appointed by the Governing Body and which met between 1984 and 1987.

As a follow-up to the suggestion made in the first in-depth study and after carrying out detailed preparatory surveys, the ILO submitted a proposal to the 220th Session of the Governing Body (May-June 1982) that the question of TWAs be included on the agenda of the 70th Session of the Conference (1984). At its 221st Session (November 1982), the Governing Body decided to take the unusual step of balloting its members to break the deadlock between those in favour of including the question in the agenda for the Conference in 1984 and those who wanted another issue to be included, as in fact happened. Starting in November 1982, the question of TWAs was proposed in five consecutive years to the sessions of the Governing Body. At each of the sessions between 1982 and 1986, the support of the Workers' group and some governments for the question finally to be included on the agenda of the following sessions of the Conference failed to convince the Employers' group or dispel the indifference of the majority of the Government members of the Governing Body. Faced with the objective problem of reaching agreement on whether or not to accept the question, the ILO decided from 1987 to stop proposing TWAs as a possible agenda item for future sessions of the Conference.

At the same time as the Governing Body, over the years, deliberated over whether or not the Conference should turn its attention to TWAs, there was a remarkable change in the structure of labour markets in many countries. New kinds of private employment agencies were set up and began to gain a foothold. Legislation and regulations based on the provisions of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), were increasingly unable to control or even identify them. Governments stepped up their attempts to provide specific regulations but often ran into the problem of pinning down exactly their nature and activities whilst trade union organizations either denounced the violation of provisions on the monopoly of placement or were concerned at the growing number of cases of abuse brought to their attention. The ILO, which was keeping a close eye on the speed of changes in how labour markets functioned, decided that between 1988 and 1990 it would carry out a wide-ranging survey in 25 countries with a view to identifying and assessing the impact of different types of agencies operating in labour markets. As 12 of the 25 countries selected were members of the European Community, the ILO carried out the survey in collaboration with and with the financial support of the Commission of the European Communities.

The ILO's first observation was that the same kind of questions raised at the end of the 1960s concerning TWAs and their legal relationship with fee-charging employment agencies as defined in Convention No. 96 now applied to some 15 new kinds of employment agency.

Its position strengthened by the information gathered during the survey, the ILO made a proposal to the 250th and 251st Sessions of the Governing Body (May-June and November 1991) that not only TWAs but also the more general question of private employment agencies be included on the agenda for the session of the Conference to be held in 1993. Given the interest shown by many members of the Governing Body, even though they were not numerous enough to persuade the Governing Body to include it, the ILO once again put the question before the 253rd and 254th Sessions of the Governing Body (May-June and November 1992), which decided that it would be placed on the agenda of the 81st Session of the Conference as a general discussion item.

The ILO's tactics with regard to the Governing Body at its November 1991 and 1992 Sessions differed from those adopted ten years before in so far as the question has not been submitted for consideration at the Conference with a view to establishing a standard but will be the subject of a general discussion. The debate which has surrounded the question of private employment agencies for more than half a century has in no way abated, with the controversy being at the heart of the stalemate within the Governing Body between 1982 and 1986 when the question of placing TWAs on the Conference agenda was being discussed. Furthermore, during those ten years, the emergence of new kinds of private employment agency complicated the functioning of labour markets and paved the way for even greater contention. In the circumstances it seemed more reasonable to forestall any move towards establishing a standard and hold a calm and highly technical discussion to try and take stock of the situation concerning the private management of employment. If, after this general discussion, the Conference was able to make objective observations, the stage would be set for the question to be considered at a later date and, possibly, for a standard to be adopted.

The information used in the analysis put forward in this report was the fruit of lengthy preparatory work. As pointed out before, a great deal of comparable data were obtained in the 25 surveys carried out between 1988 and 1990 in as many countries on five continents, using the same standard formula. In order to consolidate, test, supplement and update existing information, consultations and specific interviews concerning 11 countries and four new surveys in Asian countries well on the way to industrialization were held in the first six months of 1993. During the most recent work, particular attention was paid to trying to understand the nature and management of the different private employment agencies operating most openly on the markets, in particular in the United States, the United Kingdom, Ireland and Switzerland. Similar attention was paid to sounding out the attitudes of employers' and workers' organizations which had done the work that most closely reflected their viewpoint. More specifically, as regards workers, direct consultations were held with trade union organizations in Belgium, Germany, Italy, Japan, Spain and Sweden whilst many trade union organizations in other countries expressed their opinions in internal documents or publications.

At the same time, a great deal of research and studies carried out by a host of national institutions (universities, public employment services, independent researchers) or international institutions (confederations of trade unions or private enterprises, technical, regional or interregional bodies) were consulted,

and their input used in the preparation of this report.

This report will broadly follow the layout suggested in the document (GB.254/2/1, paragraphs 88 to 124) submitted by the International Labour Office to the 254th Session of the Governing Body (November 1992). The first chapter will place the question of private employment agencies in its historical and conceptual context. Chapter II, essential for an understanding of the rest of the report, will attempt definitions and identify as well as it can a typology of private employment agencies operating on the market. The third chapter will look at the economic point of view, assessing and explaining the growth of such agencies in recent years. Chapter IV will give a legal analysis and explain how these agencies relate to the laws and regulations of different countries. Chapter V will outline the controversy which existed and still exists between those for and against private employment agencies and suggest a way of resolving the debate. Chapter VI will sum up and make suggestions, giving the broad outlines which could, in the future, form the basis of one or more international standards. As is customary in this kind of report, the very last part will suggest possible areas of discussion for members of the Conference Committee which will deal with this question.

CHAPTER I

HISTORICAL AND CONCEPTUAL CONTEXT

The moment human beings learned to live together as a society, trading became almost second nature. They had hit upon the idea of transporting goods from where they were plentiful to where they were a scarce commodity and therefore in great demand even before producing their first basic tools. For centuries, and well before these concepts were enshrined in economic theories, people had been attracted to the idea of trading, matching supply with demand for personal profit.

Throughout history, right up to the modern age, human beings have been traded in the same way as material goods. There was therefore very little tangible difference between middlemen who tried to satisfy a demand for goods and those who supplied human beings to others who needed them.

The taking of prisoners of war, slavery, enforced conscription and massive migration have always been helped along by people prepared to capture human beings and put them to work or trade them. When agriculture was the main economic activity, there were always people willing to act as middlemen between the seasonal upsurge in demand for labour and impoverished day labourers ready to lend their muscle.

Later, during the industrial revolution, many individuals helped supply labour first to the workshops and then to the factories, channelling underemployed rural populations away from their traditional environment where there was an over-supply of labour into urban areas where they were readily employed. These elementary methods of bringing workers and employers together, which still exist in many less developed societies, formed the basis for organizing what would later be called the labour market.

The private employment agencies discussed in this report obviously have nothing in common with this primitive methods of matching labour supply and demand. But their development into the modern agencies we see today has been and still is haunted by this disreputable past. These agencies are struggling to become established throughout the world because first they have to win over those who cast a dubious eye on their development, accusing them of being the latest in the line of exploiters.

The principle of the monopoly of placement was a response to the bad reputation acquired throughout history by middlemen and recruiters, through their intrigues and excesses. As the monopoly situation continues to influence the way in which private employment agencies may operate, restricts their development, and adds fuel to debate, a few paragraphs should be devoted to analysing these early beginnings to help understand their effects on today's employment markets, as we have done in the following section. The second

section of this chapter will attempt to trace the development of private agencies in countries where the monopoly situation has not stunted their growth.

Monopoly of placement: Origin and effect

In the eighteenth century, Europe became the breeding ground for ideas of liberation and emancipation. The philosophers of the Enlightenment, the encyclopaedists and utopian socialists breathed life into the first political movements advocating equality and respect for human dignity, movements which found their earliest expression in the American Declaration of Independence in 1776 and the Declaration of the Rights of Man and of the Citizen in 1789. The tide of reform lasted a century as, gradually, the demands for social justice grew. The many workers by then employed in industry formed trade unions, improving their structures as they went, and gravitated towards industrial action. They strove for and got recognition of and respect for new rights, not only as citizens but as wage earners.

Towards the middle of the nineteenth century the idea that capitalism was exploitative and that individuals were profiting from human labour began to gain currency. Employers, recruitment agents and all those acting as middlemen between labour and employment were naturally tarred with the same brush.[1] In an attempt to counteract the activity of middlemen and prevent individuals from profiting from placement, workers' trade unions set up their first free labour exchanges where workers or anyone looking for employment could find information on factory vacancies.

From the beginning of the twentieth century, as the potential for individual recruitment agents and trade union labour exchanges to abuse their role in the placement of workers grew, the public authorities became convinced that it was their responsibility to organize workers' access to employment and assist the unemployed. During the first decade of the century, Belgium, France and Germany began to provide municipal assistance for the unemployed, with state support, and in 1909 the United Kingdom adopted the Labour Exchanges Act, setting up the first known network of public employment agencies.[2]

The process leading to the recognition of workers' rights gathered pace after 1917. The triumph of the October Revolution in Russia and the fear that it would sweep across Europe undoubtedly encouraged the capitalist powers to concede greater benefits to workers. Legislation protecting labour proliferated at the same time as the public administrations responsible for its implementation were established.

During the negotiations after the First World War leading to the Treaty of Versailles, came the adoption of what were known then as the workers' clauses, constituting a set of principles designed to improve working conditions. Part XIII of the Treaty recognized the rights workers' trade union organizations had struggled for, including the right of association, the eight-hour day, weekly rest, the abolition of child labour and equal remuneration for work of equal value. One of these principles, which were to become a kind of incipient universal labour charter, would have a considerable effect on the choices made by public authorities in the years to come with regard to organizing the labour market. This principle simply stated that labour was not a commodity.

The ILO, created under the Treaty of Versailles, was seen both as the guardian of the principles set forth in the Treaty and as a forum in which Western powers could get together and agree on the content of future labour legislation. In order to avoid any unfair competition between them, ILO member States felt they should reach agreement among themselves on how far the new benefits to workers would go and on shouldering the costs.

The principle of monopoly and the first ILO standards

International standards were to be the means chosen by the ILO to establish the principle of the monopoly on placement and persuade member States to support it. The monopoly is based primarily on ethical and ideological considerations. Since, as stated in the Treaty of Versailles, labour is not a commodity, placing workers cannot be a commercial transaction. Furthermore, equality demands that the same procedures should be followed to inform workers of job vacancies and that they should be given the same amount of notice. It follows that providing information and access to employment, namely placement, is the responsibility of the public service. Private firms or individuals should not be allowed to profit financially from placement or prevent public access to their information on job vacancies.

Reflecting the principles set forth in the Treaty of Versailles, the ILO, in one of the first standards adopted just a few months after its inception in 1919, came down in favour of a monopoly situation. Whilst the Unemployment Convention, 1919 (No. 2), advocates the establishment of free public employment agencies under the control of a central authority and private free employment agencies, the Unemployment Recommendation, 1919 (No. 1), which was adopted the same year and deals with the same question, clearly supports measures to "prohibit the establishment of employment agencies which charge fees or which carry on their business for profit".[3]

The principle of monopoly in successive standards

The principle of monopoly was reaffirmed in successive standards and statements made by the ILO, but with increasing subtlety. The Fee-Charging Employment Agencies Convention, 1933 (No. 34), and the Employment Agencies Recommendation, 1933 (No. 42), to a certain degree tempered the provisions on the abolition of these agencies. In its preamble, the Recommendation recognizes that "for certain occupations, the abolition of such agencies may nevertheless involve certain difficulties in countries in which the free public employment offices are not in a position completely to take the place of the agencies abolished". The Convention therefore initially provides for a three-year period before the agencies have to be abolished, during which time no new agencies should be allowed to set up shop. It also allows exceptions to this provision for specific categories of employment in which placement may pose a particular problem. The Recommendation recognizes the potential importance of some specialized employment offices for particular occupations and encourages public offices to follow their example.[4]

Paragraph 1 of article 1 of the Declaration of Philadelphia reaffirmed in 1944 that labour is not a commodity,[5] and in 1949 the ILO turned to the question for the third time, adopting the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96). The 1933 standard was thus revised, and its provisions made more flexible. The new standard allowed ratifying States to choose either the progressive abolition of these agencies or simply to supervise them. The first option, although it deviated little from the provisions of the 1933 standard, made its application more flexible: the time-limits for abolishing the agencies were not mandatory but were left to the discretion of national legislation; abolition was not necessary until a public employment agency had been established offering the same services; and the restriction on opening new agencies prior to abolition was lifted. The second option for the first time allowed a country to move away from the principle of monopoly and provided that both public and private agencies, even conducted with a view to profit, could operate, although private agencies could only do so under strict supervision.

Later on, between 1982 and 1986 as mentioned in the introduction to this report, the ILO proposed that the Governing Body discuss the adoption of a standard regulating temporary work agencies. The fact that it was at that point a matter of regulating agencies and not abolishing them is a clear indication that the ILO was ready to move yet another step further away from the principle of monopoly, in response to the views prevailing among those influencing international legislation.

Development of private employment agencies in countries without a monopoly

For many years, ILO member States supported the principle of monopoly. Even after 1949 when Convention No. 96 allowed countries to move away from it, most of those which had ratified the Convention did not do so (29 of the 41 signatories adopted the provisions in favour of a monopoly).

Nevertheless, since the beginning of the century a small minority of countries have rejected a dogmatic attitude towards private employment agencies conducted with a view to profit. Opting for a pragmatic approach, these countries saw no harm in private labour market management and allowed agencies a relatively free rein, while keeping them under some degree of supervision. The influence of private employment agencies was first seen in these countries (including the United States, the United Kingdom, Ireland, Australia and Switzerland), from which it eventually spread to the rest of the world.

These countries took a more positive view of the role of private employment agencies, regarding their past in a more favourable light and finding forerunners of today's agencies in both literature and history.

Temporary work can be traced right back to ancient Egypt to the time of Ramses II when seasonal agricultural workers were first used.[6] The practice continued in the Middle Ages when journeymen began touring France once they had finished their apprenticeship. Balzac refers to temporary work in the nineteenth century, when people were engaged for extra work in administration,

and compares their status with that of novices in religious orders.[7] Executive search, an established practice in today's modern societies, first began in Europe at the beginning of the nineteenth century when Baron Carl Otto Mörner persuaded Napoleon I to appoint one of his marshals, Jean-Baptiste Bernadotte, as heir to the Swedish throne. In 1908 Percy Coutts, a well-intentioned member of the British middle classes and successful businessman in Victorian England, took it upon himself to help officers returning from the colonies to find employment, thus inadvertently becoming involved in what would much later be known as outplacement.[8]

For centuries, private intervention in employment amounted to no more than brokerage, namely bringing employers and workers together. After the mid-1940s, a host of new agencies began to spring up which, as they moved away from the mainstream, took on their own identity and methods of operation. The recruitment and hiring out of workers broke away from placement in the strict sense around 1945, and the first temporary work agency was set up in 1948. Similarly, the recruitment of executives became a fully-fledged occupation separate from traditional placement in the mid-fifties with the establishment of the agency that was to become the largest multinational enterprise specializing in this activity.[9] In the 1970s outplacement agencies began to gain ground, constituting a new kind of fee-charging employment agency, totally different from those covered in Convention No. 96. In the 1980s, staff leasing agencies were set up, which were a kind of temporary work agency with their own particular slot in the labour market.

The diversification and expansion of employment agencies seem to have gathered momentum in the last 20 years. The following chapters will attempt to define these agencies and analyse the reasons behind their success.

Notes

[1] One of the first people to express an opinion in this respect was Louis Blanc, Chairman of the Luxembourg Commission of 1848, who recommended a shorter working day, the organization of employment agencies and the abolition of subcontracting on a piece-work basis *(marchandage)*.

[2] See M. Wallin: "Labour administration, origins and development", in *International Labour Review* (Geneva, ILO), July 1969, pp. 62-67.

[3] For the full text of these instruments, see ILO: *Conventions and Recommendations, 1919-1966*, pp. 8-11 (Geneva, ILO, 1966).

[4] For a more in-depth analysis of the content and scope of international standards on employment, employment services and fee-charging employment agencies, see S. Ricca: *Les services de l'emploi: leur nature, leur mandat, leurs fonctions* (Geneva, ILO, 1982), pp. 7-22.

[5] The declaration concerning the aims and purposes of the International Labour Organization, known as the Declaration of Philadelphia, can be found in the annex to the Constitution of the ILO: *Constitution of the International Labour Organization and Standing Orders of the International Labour Conference* (Geneva, ILO, 1992), pp. 22-24.

[6] Quoted in G. Caire: *Le travail intérimaire*, "Que sais-je" Series, No. 2804 (Paris, Presses universitaires de France, 1993), p. 4.

[7] Balzac's thoughts on the relationship between literature and sociology in *Les employés*, (Paris, La Pléiade, 1969), Vol. VI, p. 914.

[8] Recalled in J.-L. Buridans and J. Boutault: *L'outplacement démystifié: un nouvel envol professionnel* (Paris, Dunod, 1990), p. 16.

[9] See press reports following the first international conference of Executive Search held in Paris, November 1987, including D. Pourquery: "Le nouvel art de la chasse", in *Le Monde*, business supplement, 14 Nov. 1987, p. 18.

CHAPTER II

DEFINITIONS AND CATEGORIES OF PRIVATE EMPLOYMENT AGENCIES

While the previous chapter sought to place private employment agencies in a historical and conceptual perspective, this chapter will confine itself to the situation as it is observed today. The aim is to provide the reader with the concepts and categories which will serve as a frame of reference for the analysis undertaken in the following chapters. This chapter is divided into four sections. The first section gives a definition, the second is an attempt to classify agencies according to a typology, the third describes the different types of agencies, while the fourth contains comments on the construction of this typology.

DEFINITION

What the agencies covered by this survey have in common is employment as the main or secondary purpose of their activity. Their action therefore has an impact on the way labour markets function. They are different from one another, but together make up a homogeneous whole, just as similar cells, the basic units of organic life, are grouped together to form tissue. It would make much less sense to study each agency individually than to carry out a global survey such as this one, which is far better able to highlight the complementarities which exist between these enterprises and assess their combined effects.

Private employment agencies could be defined as service enterprises under private law which undertake, under contract and in exchange for financial compensation (a fee or subsidy), operations on behalf of individual clients or client enterprises with the aim of easing or speeding up access to employment or career progression or filling a vacancy. This definition includes agencies which undertake to carry out a specific assignment or task for a client enterprise by recruiting appropriate personnel, and companies which, as an alternative to unemployment, employ and train workers in order to make it easier for them to find a job later on.

The terms used in this definition should be clarified as follows:

— The concept of *private* refers to the area of law which governs their operations. Thus, the term does not necessarily reflect the source of the capital used in their activity (which can come from the state budget in the form of a subsidy or participation in the initial investment) or the objective of their activity, as the definition covers both for-profit and non-profit agencies.

— An important element of the definition is the concept of a contractual relationship between agency and client. This implies the signature of contracts in writing which are enforceable by action in the event of disputes;

it therefore excludes the informal practices and customs prevalent in some rural areas. It is this contract in writing that distinguishes the legally identifiable modern agencies dealt with in this report from the informal or illicit structures which still persist at the fringes of industrialized societies and in developing countries.

— The concept of *operation* is broad enough to cover all the possible legal forms of acts undertaken by an agency with regard to a client or as an intermediary between a worker client and user enterprise. Such *operations* may take the form of brokerage, performance of a service, delegation, or a contract of employment.

— The operation may be carried out by agencies on behalf of an individual client, a worker or an enterprise, or a group of clients.

— The concept of employment may refer to the worker's first job or a new job; it may cover employment within the country or abroad; since there is no reference to duration, the concept covers both temporary and open-ended employment.

— The definition contains no concept of skill, and therefore covers all jobs, irrespective of their level of skill.

Typology

This attempt at a typology is based on the dual criterion of the nature of the legal relationship between agency and client and the type of operation carried out by the agency. This is not the only criterion that may be applied (others might have included the type of potential client targeted, and the purpose of the agency, depending on whether the operation undertaken is its main activity or a secondary one). This criterion, which is inevitably somewhat arbitrary, was selected because it is consistent with the way these agencies identify themselves (and are identified by the regulations in force), the way in which they are grouped together and the way they present themselves on the market.

If we apply this criterion, we find 16 different types of agencies, which may be classified into five categories. The first category covers agencies whose main role is that of intermediary between job supply and demand: fee-charging employment agencies, overseas employment agencies and agencies for the recruitment and placement of foreign workers.

The second category covers agencies in a triangular contractual relationship with workers on the one hand, under a regular employment contract, and with client enterprises on the other, under an assignment or enterprise contract; these include temporary work agencies (TWAs), contract labour agencies and staff leasing agencies.

In the third category, we find agencies with a contractual relationship in the form of performance of a service other than placement in the strict sense of the term: executive search agencies, outplacement agencies, job-search consultancies and personnel management consultancies.

The firms in the fourth category are those that originally engaged in activities other than the provision of employment and gradually branched out into employment in response to labour market needs: most of these are hybrid

firms combining their traditional activities with those of the agencies in the first three categories. This category includes training and placement institutions, job shops or cooperatives, agencies managing employment advertising space and those that manage computerized job databases.

The fifth or residual category covers two types of agencies, career-management agencies and employment enterprises or intermediary enterprises; what they have in common are marked differences compared with the firms in the other four categories.

Overview of the different types of agency

No study of private employment agencies could claim to be exhaustive if it failed to give an overview, however tedious, of the different types of agency, and to attempt at least to highlight the legal and operational characteristics of each type.

Fee-charging employment agencies

These are the most traditional type of agencies, which are certainly what the drafters of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), had in mind, reflecting as they did the reality at the time. This type of agency acts as an intermediary bringing together vacancies and jobseekers and therefore is not a party to an employment contract. At a time when there are not enough vacancies to go around (or a "seller's market"), their job is to select the best candidate among the many applicants for a given post. At a time when jobseekers are in short supply (or a "buyer's market"), on the contrary, they seek out possible candidates for a given position. They may help bring a vacancy and a jobseeker together, for instance if they are geographically distant or if there is no exact skill match.

Unless they are subsidized, these agencies charge a fee for their services once the employment contract has been signed between the employer and the worker whom they have brought together. They may, however, operate on a non-profit basis, the fee going to cover their expenses. These agencies may specialize in a specific job market (clerical or banking jobs, for example), focus on a specific region, or target a specific type of worker (for example, placing of retired persons seeking volunteer work or placing of workers available to work unusual hours, for instance at night or on weekends). Some of these agencies have become nationwide leaders in their field with vast networks of branch offices. One might include in this category trade union labour exchanges, which play an important role as brokers where collective agreements contain union security clauses, as well as the labour pool system prevalent in some ports.

The legislation governing these agencies is more often than not based on the provisions of Convention No. 96: requirements include the obligation to take out a licence (or obtain approval) to be renewed every year, to submit their scale of fees for approval, and to refrain from charging a fee from the jobseeker. Very often these agencies compete not only among themselves but with the public employment service as well. This competition does not prevent them from organizing in federations, adhering of their own accord to codes of ethical

conduct adopted at federation level, and joining together, again at federation level, to stand up to the legislative, administrative and judicial authorities or the trade unions.

Overseas employment agencies

Widespread on the Indian subcontinent and south-east Asia,[1] these agencies specialize in selecting and recruiting national workers for jobs overseas, in particular the Arab countries of the Gulf. The better-established ones have branches in the host country which seek out and transmit vacancies and provide follow-up and protection to the workers they have recruited once they are employed.

Subject in principle to strict supervision by the labour administration and required to comply with specific regulations, these agencies act either as legal representatives of overseas employers (and in this capacity have authority to sign employment contracts) or, most frequently, as intermediaries. They derive their income from the overseas employer and are supposed to charge workers only an initial application fee. There are, however, numerous cases of abuse, especially by illegal agencies playing on the widespread urge to seek employment overseas.

Now that restrictions on freedom of movement have loosened up in Central and Eastern Europe, and in Russia in particular, firms are beginning to appear in these countries (mainly of foreign origin), specializing in management consultancy, but with a sideline in headhunting, training and job placement in the industrialized countries of Europe and the United States, targeted at national technicians and scientists seeking work abroad.

Agencies specializing in the placement of au pair girls or domestic employees abroad may be included in this category.

Agencies for the recruitment and placement of foreigners

These agencies are exactly the reverse of those described above. They fill a need on the national labour market by selecting and recruiting workers abroad for local employers. This type of recruitment is often carried out under manpower agreements between the country of origin and the host country. Like the previous category, these agencies are governed by legislation enacted especially for them. They often operate in cooperation with counterpart agencies in the workers' country of origin.

The most aggressive among these agencies play on the competition between the various countries of origin in order to obtain conditions of employment which are most advantageous to their employer clients. Some host countries, such as Malaysia, require prior authorization of the Labour Ministry for the recruitment of each foreign worker, as the most effective means of controlling the inflow of workers and adapting it to meet shortages of manpower in certain trades or areas of skill.

Temporary work agencies (TWAs)

TWAs first appeared on the labour market in the United States shortly before Convention No. 96 was adopted and now account for the majority of private employment firms, in terms both of volume of business and number of offices and branches. Although the exact figure is difficult to estimate, the volume of business done by TWAs is at least equal to that of all of the other types of agency put together. Despite this high turnover, their market share is still relatively small: in fact, the employment rate of temporary workers recruited through agencies tends to be overestimated. Hours of work performed by temporary workers rarely exceed 2 per cent of the total for employed persons in a single year. Usually the figure is below 1 per cent.

The nature of their operations has long been a matter of hot dispute. It is now widely recognized that TWAs recruit workers and then immediately assign them to enterprises that have concluded assignment contracts with the TWA. The length of the contract (usually fixed in advance) signed between the worker and the TWA is normally the same as the length of the assignment agreed upon between the TWA and the enterprise to which the worker is to be assigned (or user enterprise). The worker, TWA and user enterprise are linked by a triangular arrangement under two types of contract: a fixed-term employment contract between the worker and the TWA, and an assignment contract between the TWA and the user enterprise. Thus, the worker is legally employed by the TWA, which assumes most of the employer's responsibilities (with the user enterprise responsible for the rest, such as equipment, supervision and safety).

This model varies according to the legislation of each country: the worker on assignment may have the status of a self-employed person instead of that of a TWA employee; in this case, the TWA is not the legal employer of the worker on assignment, but an agent acting as the representative of the user enterprise; the TWA may also hire workers under an open-ended contract, building up a team of employees whom it then sends on successive assignments with different user enterprises.

Depending on the legislation, TWAs may be prohibited from operating in certain sectors where there is a particularly high risk of abuse, such as construction, for example, as is the case in Germany and the Netherlands; or they may be allowed to operate in certain clearly defined sectors, as is the case in Japan where the TWAs' market is specifically limited by the law to 18 occupations. In some other countries, such as France and Belgium, the legislation likewise lays down a limitative list of cases in which TWAs may be used: to replace permanent workers who are temporarily absent, to launch a project, to cope with peak activity periods, etc.

Already recognized as purveyors of temporary jobs, TWAs have gained popularity, especially among enterprises, which see them as an opportunity of introducing flexibility in their human resource management.[2] They are also increasingly sought out by workers, especially by first-time jobseekers; while they still value permanent full-time employment, these workers see TWAs as a means of gradually gaining a foothold in the labour market as a necessary preliminary to obtaining a stable job.[3] Thus, temporary assignments are increasingly used as trial runs, both by workers and by user enterprises, which

generally end up giving permanent jobs to roughly one-third of the workers initially recruited on temporary assignment.[4]

The most advanced TWAs now offer brief training and retraining programmes to workers selected for specific jobs to provide them instantly with the skills they need to perform their assignment. They have also learned to test candidates' aptitudes accurately so as to better direct them to the jobs or training within their purview. Training programmes and aptitude tests have become a major part of TWAs' services, which they often market specifically.

Where this is not prohibited by law, for example in the United States, TWAs are becoming suppliers of long-term contract labour and take over whole areas of enterprises' peripheral activities, such as messenger services, maintenance or security.[5]

TWAs include about ten multinational companies with a vast network of subsidiaries and branches, some of which cover over 30 countries. As in the case of fee-charging employment agencies, they both compete and cooperate with one another, and their federations of professional organizations are among the most influential and well-established both nationally and internationally.[6]

Contract labour agencies

These agencies continue in the tradition of enterprises supplying goods or services under contract. An increasing number of firms specialize in recruiting and supplying to user enterprises teams of workers who are assigned to specific tasks as part of a specific job. Legally speaking, the difference between the operation of these firms and that of TWAs lies in the fact that the latter do not supply their workers with tools and materials, and do not provide direction and supervision once the worker has been assigned to a job (this being the role of the user enterprise), while the contract labour agency is supposed to do this. In fact, this is a fairly subtle distinction and one which is not easy for an outsider to discern.

Trade union organizations criticize the abuses often involved in recourse to these agencies. In their view, it is a misuse of contracting when, instead of performing tasks as part of one complete specific operation in the enterprise, such as cafeteria facilities, cleaning or transportation, these agencies merely supply the enterprise with workers in all categories who are assigned to various tasks and often work side by side with permanent employees of the enterprise in the same jobs. It is true that many agencies cannot deny that they allow themselves to be used by employers who see contracting-out as a means of recruiting workers indirectly and thus saving on labour costs.[7]

Staff leasing agencies

These agencies, which appeared in the United States in the mid-eighties, cater mainly to small enterprises. Their role is to relieve these enterprises of the burden of personnel management constraints and, in exchange for a comprehensive fee fixed by contract, to provide them with human resource policy and management on a par with those of the biggest and best enterprises.

In legal terms, it is as if these agencies recruited the entire staff necessary for an enterprise, then leased the staff to the enterprise. From the workers' point of view, the agency is their legal employer, while to the enterprise it is the lessor of this staff. The advantage of this type of service lies in the number of client enterprises and hence the large number of persons employed. As large-scale employers, these agencies can offer state-of-the-art personnel management methods (speedy calculation and payment of wages and benefits, training courses, settlement of disputes, career counselling); they are also in a position to negotiate advantageous terms for all their employees with the various specialized companies on the market – supplementary pension schemes, sickness and accident insurance, travel rates, fitness club memberships, property or purchase loans, school fees, etc. Despite the cost of the fee paid to the agency, client enterprises stand to gain in terms of time saved on personnel management and in terms of worker satisfaction and hence stability.

Obviously, this type of agency can only operate if labour legislation does not prohibit staff leasing without limit as to duration.

Executive search agencies

Commonly known as *headhunters* (a term they find far from flattering), these agencies specialize in seeking out rare talent for strategic posts on behalf of client employers. The term "executive" is in fact inaccurate, since these agencies may handle managerial or consultancy positions or the liberal professions. This market is in fact defined not in terms of how the position ranks within the enterprise but rather in terms of the remuneration offered to the candidate, which more accurately reflects the rarity of the skills being sought. The candidate is "hunted down", that is, contacts are made at the agency's initiative with persons usually already in employment who are not necessarily looking for a new job. Applications may also be invited by means of vacancy announcements published in the press. The agency is paid either a retainer for the time spent on the search or according to results, in which case the fee is a percentage of the annual remuneration to be paid to the candidate recruited. In legal terms, the agency's role is mainly that of a provider of services to the potential employer, including consultancy, search, selection and pre-recruitment negotiation.

This is a highly specialized profession, in which a range of skills come into play in the interviewing of the candidate, evaluating his or her skills, negotiation, familiarity with earnings levels, the ability to set up contact networks off the beaten track on the employment market, and the ability to combine discretion with the need to market the services. Client enterprises value these agencies for the economic advantage they stand to gain by enlisting the services of a rare human resource. These agencies are organized in national and international federations whose objectives are comparable to those of other types of agency (representation, defence of interests, guarantee of integrity and quality of services, consultancy/advice to member firms and settlement of disputes).

Outplacement agencies

These agencies, which emerged at the end of the seventies, specialize in resettling executives (for the most part, but also workers of every skill level) who have become redundant or are threatened with redundancy as a result of austerity measures, industry restructuring or a dwindling demand for individual skills. Seen as a means of softening the blow of redundancy,[8] outplacement assists the executive or worker in carrying out an occupational assessment and self-evaluation of skills, scanning the market, choosing retraining or a new occupation, and learning job-search techniques.[9] A contract, which is usually concluded between the agency and the outgoing worker's employer, does not guarantee that the redundant worker will be placed in a new job. The employer usually offers outplacement counselling to a worker made redundant, in addition to severance pay, either as a reward for services rendered or in order to forestall disputes.

Outplacement services can be individual or collective, with some agencies specializing in collective services. Some specialize in "retail" operations, that is, they offer their services not only to enterprises but to redundant workers who apply directly to them. In this case, the contract is between the agency and the worker and the worker pays the fee.

Outplacement agencies also have their own representative organizations with federations at national and international level.

Job-search consultancies

These agencies cater to individuals seeking counselling to help them enter or re-enter the labour market. Their services include assessing the client's aptitudes, prospecting for training opportunities, setting up interviews with persons already working in different occupations, etc. Some agencies also prospect among potential employers with a view to recruitment. Generally speaking, there are no specific regulations governing these agencies.

Personnel management consultancies

Although their name suggests that these are firms offering a full range of personnel management services, such as setting up payment-by-results systems, management courses or communication courses, these agencies often specialize in a few of these operations, mainly staff selection and recruitment. Therefore the only difference between these agencies and the executive search agencies mentioned above is the extent to which staff selection and recruitment predominate in their range of activities.[10]

Recruitment agencies may choose to mask their activities behind misleading company names or titles if private recruitment is placed under strict control by the regulations in force or if they feel excessively restricted by the conditions required to obtain authorization to operate on the private employment market.

Training and placement institutes

An increasing number of training institutes now offer their graduates job-search and placement services. This additional service enables them to demonstrate that their training matches the demand for skills on the labour market. Successful placement of their graduates is a sales argument that training centres know will attract potential clients. Spurred on by competition, training institutes – and not only private ones – therefore combine job-search assistance with training in the strict sense of the term.

Sometimes it is the placement offices that branch out into training. With certain skills clearly in short supply, some placement offices provide training in these skills in order to meet the staffing needs of their client employers.

Job shops or cooperatives

These enterprises emerged in the late eighties and have been increasing in number ever since. They are usually fairly small-scale spin-offs of specialized consultancies or services. Several persons with a combination of skills (for example, systems engineers and computer network specialists) associate loosely or formally to market their services for assignments of varying lengths to client enterprises who pay them a fee for their services.

The better-established among them market services that are not within their members' range of skills, which they obtain on the market for the duration of a given assignment. Thus, they may recruit a worker whom they then hire out to a client enterprise for a fixed-term assignment. This type of enterprise, which started out as a conventional service enterprise, is becoming increasingly similar to a temporary work agency.

Flexible and dynamic, but often short-lived, these enterprises typically have a status that is not easy to define and it is therefore difficult to place their activities on the same footing as those of traditional employment agencies.

Employment advertising agencies

Some agencies specialize in buying newspaper advertising space wholesale in order to use it for vacancy announcements and jobseekers' advertisements. They then sell these spaces at retail prices to individual advertisers. All three parties stand to gain by the operation: the newspaper because it deals with a single client who turns in the advertisements in ready-to-print form; the agency, which benefits from the profit margin between wholesale and retail prices; and the advertiser, who pays less for the advertising space than if he had applied directly to the newspaper and who has the additional advantage of being advised by the agency when preparing the advertisement.

An increasing number of agencies provide an additional service to their advertising clients, especially if these are enterprises publishing vacancy announcements: for an extra fee they interview and preselect candidates responding to the advertisements, enlisting the services of psychologists and professional recruiters. The growing popularity of these preselection services has meant that employment advertising agencies are increasingly converting themselves into personnel selection and recruitment agencies.

Having emerged fairly recently in the late eighties, this activity is not yet governed by specific regulations.

Computerized job database agencies

A spin-off of the emergence and growth of electronic mail and teletext communications systems, these agencies specialize in computerized databases of vacancies and candidates. They compile their data by means of advertisements in the press or other more practical methods, such as collecting curricula vitae at news-stands, then make them available through vast telecommunications networks. They receive their fee in the form of the charge automatically levied by the networks on every user accessing the database.

These agencies may be the forerunners of entirely new methods which will gradually take over the market, replacing the traditional card files and interviews by bringing prospective employers and jobseekers together via the telecommunications networks.

Career-management agencies

These agencies have been around for a long time in the entertainment and fashion industries, professional photography and sports, and are spreading to other occupations, especially those involving short-term engagements in different countries. Their role is to manage their clients' careers, and consists of prospecting markets, negotiating terms of contracts, and advising their clients on career moves. Their fee is paid in the form of an initial fixed sum for putting a client on their books, followed by a percentage of the fees paid to their clients.

These agencies act as their clients' representatives vis-à-vis employers. Their contracts with their clients often contain a clause giving them exclusive rights. Trust, credibility and familiarity with the market are major factors in the clients' and agencies' decision to do business with one another. Repeated cases of breach of trust have led countries to bring their activities under strict control, for example, in 1989 France enacted regulations governing modelling agencies.

Employment enterprises or "intermediary associations"

These are enterprises whose purpose is not to produce to sell and make a profit, but to produce in order to train and occupy their staff with a view to their entering regular employment at a later stage. They are reminiscent of sheltered workshops, a well-established social tradition in the industrialized countries whose purpose was to enable handicapped workers to produce goods in a working environment and using working methods adapted to their capacity. However, they differ from sheltered workshops in that the employment offered to workers is temporary (and the workers themselves are neither disabled nor even unable to cope socially, but merely lack skills or are unemployed) and in that the jobs created have a training purpose.

Generally speaking, these enterprises are private organizations or non-profit associations, rarely economically viable, and are subsidized out of public funds.

They are viewed as an alternative solution which is socially and economically preferable to unemployment. Their growth is hampered both by the frequently difficult relations they have with mainstream enterprises in the same sector which are wary of competition from subsidized enterprises, and by the difficulty of finding facilitators, trainers and enterprise managers willing to administer them.

Some of these enterprises employ vast numbers of workers, such as the 200,000 labour service companies in China, which employed 16 million workers at the end of 1991,[11] or the some 400 German enterprises set up to promote employment and structural change (*Gesellschaften zur Arbeitsförderung, Beschäftigung und Strukturentwicklung (ABS)*), which employed about 150,000 persons at the end of 1992,[12] or the job-training enterprises in France (409 of them employed an average of 12 persons each at the end of 1992), or the 934 French "intermediary associations" which provided hours of work equivalent to over 10,000 full-time jobs in 1992.[13]

A FEW CAVEATS REGARDING THE TYPOLOGY

The typology attempted above is not absolute, exhaustive or definitive. Rather than a strict classification, it should be viewed as a "snapshot" of a situation that is changing continually, which can be used as a frame of reference, albeit arbitrary, in a discussion of the situation as it stands now.

It is clear from this typology that the dividing lines between the different types of agency are unstable and subtle. Legal experts and practitioners are often hard put to draw a distinction between a contract labour enterprise, which recruits staff and then supplies it to user enterprises, and a TWA which essentially operates in exactly the same way.[14] Likewise, as we have seen, the services offered by job-search consultancies are not very different from those of outplacement agencies catering to individuals.

The limits of this typology are not absolutely clear-cut either. Some firms which could have been included were left out, such as those which organize job fairs or provide secretarial services to assist jobseekers by composing their curricula vitae, those publishing periodicals or producing television programmes targeted at the unemployed, or even support groups run by unemployed persons themselves.

Firms specialized in helping people set up small businesses were also deliberately excluded, as their inclusion would have resulted in an excessively long, complicated and unusable list. It would not, however, have been inconceivable to include them, since these firms help set up individual businesses and therefore contribute to employment efforts by creating self-employment.

Lastly, this typology does not include structures set up within enterprises, industrial groups or the public service with the aim of offering their employees services which are very similar to those afforded by the agencies mentioned in this chapter (counselling, assistance in resettlement, training/placement, etc.). In the analysis undertaken in this report, the concept of "agency" will be taken to mean a firm with its own legal identity, operating on the external job market.

Notes

[1] The role of agencies specializing in finding jobs overseas for nationals is particularly well illustrated in four recent monographs on India, Indonesia, Malaysia and Thailand. These are: Srivastava, R. S.: *Role of private employment agencies in the functioning of the labour market in India* (New Delhi, 1993); Apul, M.: *The role of private employment agencies in the functioning of labour markets in Indonesia* (Jakarta, 1993); Lee Tuan, T.: *The role of private employment agencies in the functioning of labour markets in Malaysia* (Kuala Lumpur, 1993); and Reantragoon, S.: *The role of private employment agencies in the functioning of labour markets in Thailand* (Bangkok, 1993) (mimeographed documents; limited circulation).

[2] Flexibility has certainly been the leitmotiv of labour relations in the eighties. For a comparative study see Treu, T.: "Labour flexibility in Europe", *International Labour Review* (Geneva, ILO), 1992/4-5, pp. 497-512. See also Garibaldo, F. (ed.): *Flessibili o marginali? Le "nuove" forme di lavoro in Italia e in Europa* (Rome, Ediesse, 1992).

[3] For an overview of the behaviour and motivations of workers recruited by TWAs, see a study carried out by the profession in France in 1982 which is still relevant today: Delarue, A.: "Les travailleurs temporaires: d'où viennent-ils? Où vont-ils?", *Travail temporaire, élément du marché du travail* (Paris, Promatt, Syndicat des professionnels du travail temporaire, 1983).

[4] For an in-depth analysis of the relationship between temporary work and permanent employment, see Bronstein, A.: "Temporary work in Western Europe: Threat or complement to permanent employment?" *International Labour Review* (Geneva, ILO), 1991/3, pp. 291-310.

[5] There have been many publications analysing the increasing use of contract labour and other forms of flexible or atypical employment. Two representative studies have been carried out on the labour market in the United States, and that of Argentina and Peru, respectively: Belous, R. S.: *The contingent economy: The growth of the temporary, part-time and subcontracted workforce* (Washington, National Planning Association, 1989); Marshall, A. (et al.): *Circumventing labour protection: Non-standard employment in Argentina and Peru* (International Institute of Labour Studies, Geneva, 1992).

[6] For a critical view as seen by the trade unions see Bilik, A.: "Too many temps", *The Washington Post* (Washington, DC), 30 Apr. 1993, p. 18.

[7] Some authors have clearly drawn the link between technological innovation and new forms of employment. In this connection, see Tremblay, D-G.: "Innovation technologique et différenciation des formes d'emploi", in Rodgers, G. and J. (eds.): *Les emplois précaires dans la régulation du marché du travail* (Geneva, International Institute of Labour Studies and Free University of Brussels, 1990), pp. 237-256 (this article published in the French version only).

[8] The psychological aspect is essential in outplacement operations; for a clearer picture, see Clavier, D.: "Perte d'emploi et traumatisme", *Les cahiers d'information du directeur de personnel* (Paris), No. 22, third quarter of 1992, pp. 41-44.

[9] The actual content of outplacement operations is particularly clearly illustrated in Descheemaekere, F. and Laudouar, R.: *Outplacement: Marketing de recherche d'emploi* (Paris, Les éditions d'organisation, 1987).

[10] For a more detailed account of the work done by consultancies, see Rousseau, Y.: *Placement et recrutement* (Paris, recueil Dalloz, v° Main-d'œuvre, Apr. 1992), pp. 15-17.

[11] For a more detailed account of labour service companies, see Ma Yong-tang: *China: Current labour policy in the context of economic reform* (Geneva, International Institute of Labour Studies, 1993; mimeographed working document, limited circulation).

[12] The emergence, development and role of ABS are very clearly illustrated in Lichtenberger, B.: *Active labour market policy: Enterprise management's contribution* (Geneva, ILO, 1992; Management Development Programme series, mimeographed working document, limited circulation). See also Knuth, M.: "ABS companies and the

potential of labour market policy to promote structural development", *Employment Observatory – East Germany* (Brussels, Commission of the European Communities), No. 8, Aug. 1993, pp. 1-6.

[13] For further details on intermediary associations in France, see: "Entreprises d'intérim d'insertion", *Liaisons Sociales* (Paris, No. 6814, 24 Mar. 1993, pp. D4 1-6); see also Herrou, M.: "Les associations intermédiaires", *Travail* (Dijon, Alternatives Economiques), No. 27, winter 1992-93, pp. 67-78.

For job-training enterprises, see Villalard, J.: "Les entreprises d'insertion", *Dossiers statistiques du travail et de l'emploi* (Paris, Direction de l'animation, de la recherche, des études et des statistiques (DARES) du ministère du Travail, de l'Emploi et de la Formation professionnelle), No. 96-97, Sept. 1993, pp. 67-71); see also in the same issue, Cealis, R.: "Les associations intermédiaires en 1992", pp. 73-80, containing figures on these associations as at December 1992.

[14] For a more detailed analysis of the differences and similarities between the legal concepts of temporary work, contract labour, staff leasing and fixed-term contracts in the countries of the European Community, see an article which is still relevant today: Blanpain, R. and Drubigny, J.-L.: "Le travail temporaire dans les pays de la CEE", *Le travail temporaire dans la société moderne*, Cahier No. 21-1982 (Bruxelles, Institut international du travail temporaire, 1982).

CHAPTER III

THE GROWTH OF PRIVATE AGENCIES

Having looked at the origins and institutional aspects of the private employment market, this chapter will concentrate on the forces within it. These agencies have enjoyed continuous growth, albeit at different rates in different countries. At the same time, they have diversified their activities and enjoyed relatively untrammelled geographic expansion. This chapter will focus primarily on economic considerations, and is divided into two main sections. The first will suggest how this growth may be measured and the second will attempt to analyse the reasons for it.

MEASURING GROWTH

A few preliminary observations will be made before we move on to quantitative estimates as such. They will help to show the limits and scope of the following assessments.

Assessments: Scope, content and limits

Undoubtedly, the most reliable data will be those measuring the activities of clearly identifiable agencies, with the most highly organized federative structures. It is much easier for observers and researchers to gather, contrast and compare data when they relate to agencies which have been identified beforehand. These agencies are also more likely to supply data if they are voluntary members of federative organizations. The most reliable conclusions are those which can be backed up both by surveys and by the processed data from the agencies themselves.

It is much more difficult, on the other hand, to quantify the range of activities of borderline agencies dealing in areas which could be confused with the activities of other agencies operating outside the sphere of employment. Personnel management consultancies are a prime example, along with contract labour agencies, which are difficult to tell apart from those subcontracting goods and services.

Similarly, agencies which operate on the basis of discretion and confidentiality will probably not coordinate with others and will be even less inclined to reveal figures on their activities. This applies, for example, to career management or vocational guidance agencies, which deal with their clients on a personal basis.

The data in this chapter cover six of the 16 kinds of agency described in Chapter II. The data may be limited, but they do give an indication of private

employment management as a whole since the enterprises looked at account for at least 80 per cent of aggregate agency turnover.

These agencies are fee-charging employment agencies, temporary work agencies, contract labour agencies (a rough estimate), staff leasing agencies, executive search agencies and outplacement agencies.

Activities are measured in terms of the agency or group of agencies' turnover, the number of companies, the size of its network or the number of staff involved. Where possible, growth is assessed on the basis of a number of variables.

Of course, contract labour agencies will have to be measured differently. They are assessed in terms of how many workers have entered into a contract with them.

The growth of private employment agencies does not follow a linear pattern. They come and go at an extraordinary rate, depending on labour market forces and whether employment supply and demand are rising or falling. They operate in a highly heterogeneous environment where very small agencies rub shoulders with the biggest and most seasoned operators, probably with a higher turnover of small enterprises than in any other sector, the market being easier to break into as the initial outlay is relatively small and the work does not seem unduly complicated. These agencies are frequently taken over, merged or diversified into other related activities. They are also the least able to weather any minor changes in the economic situation. If recruitment slows down or is postponed, or employers turn more to the free public employment service following the slightest crisis, the most vulnerable agencies collapse. Conversely, a rapidly expanding labour market attracts poorly equipped agencies, only for them to fall victim to the next turnaround in the economic situation.

Obviously, this kind of study cannot be expected to take account of the changes in the economic fortunes of all the countries of the world.[1] We will therefore only look at structural growth, and the trends highlighted will reflect a general pattern. The conclusions of this study will probably be all the more valid, as incidental or ephemeral elements will have no part in the analysis on which they are based.

Fee-charging employment agencies

Fee-charging employment agencies, among the oldest private employment agencies, expanded at a rate that any company in the service sector would envy. In fact, however, they developed more slowly than other types of enterprise in the same sector. They tend to be relatively small enterprises (none have reached the scale of the multinational companies operating in other categories) and cater to markets which are limited in terms of occupation or area covered. The enterprises in this group are the first to spring up in markets open to private employment management and at the same time are the most likely to diversify, to move towards more specialized forms of operation, or – where this is allowed by legislation – to combine placement in the strict sense of the word with other kinds of services.[2]

It is easier, of course, to observe and measure the growth in the number of these enterprises in markets where they are allowed to operate by legislation. As

their progress can be seen in nearly every country looked at, regardless of its level of development, it can safely be said that if allowed to operate, these enterprises naturally tend to consolidate their position in almost all the world's markets.

In the United States, where the market tolerates these enterprises more than in other industrialized countries, and where they are best established, they have shown a marked, even spectacular development. As late as 1968, the network amounted to no more than 2,000 enterprises. Twenty-five years later, in 1993, it had increased sevenfold, with nearly 14,000 companies and a network of 20,000 offices or branches. In 1993, there were nearly 216,000 employees and US$3.9 billion were spent on wages. Compared with this, the public employment service has a network totalling 1,700 agencies with a budget of US$1 billion (including both federal and state funds).[3]

Switzerland classifies agencies according to occupational sector and whether they are conducted with a view to profit or not. The for-profit category covers all the agencies described in the preceding chapter, however they may operate. Over the past 15 years, Switzerland has recorded an annual average increase of 10 per cent, with 800 for-profit companies with a network of nearly 1,000 offices (compared to the 26 cantonal employment offices) in existence in 1991.[4]

Similarly, over the last ten years, the United Kingdom has recorded an annual average increase of 10 per cent, with 3,500 enterprises and 5,000 offices operating in 1992, as opposed to the 1,100 public employment service agencies. It should be pointed out that in both the United Kingdom and Switzerland there is a fine line between fee-charging employment agencies and temporary work agencies, as the law allows agencies to both engage in placement and send workers on temporary assignments.

Japan, which limits private placement to 29 occupations clearly defined in law, has recorded an annual average increase in agencies of around eight per cent over the last ten years, which by March 1993 meant that there were 3,200 private employment offices conducted with a view to profit, compared to only 479 public employment service offices.[5]

In Poland, where legislation authorizing fee-charging employment agencies dates back only as far as October 1991, 125 private employment offices have sprung up in less than 18 months. In Bulgaria, where legislation legalizing private employment management is no less recent, there were 65 agencies operating in urban markets in May 1993, whilst between September 1991 and March 1993 alone, 125 agencies had registered with the Ministry of Labour, indicating the rapid development of a dynamic, competitive but ultimately cut-throat market.

In Zimbabwe the number of licensed agencies (including enterprises in several categories) grew by one-third between 1978 and 1991.[6]

In 1982 Malaysia began to keep records on the fee-charging employment agencies operating on its territory, with the Ministry of Labour registering 52 that year. By July 1992, they totalled 318, a sixfold increase in ten years.

In 1983, India adopted new legislation on emigration which brought overseas employment agencies under the supervision of the labour administration after allowing them a certain time to register. In 1986, 1,000

agencies had been granted a licence to operate, a figure which had risen by 80 per cent by 1992, just six years later. In addition, some 2,000 agencies were estimated to be operating illegally in 1992.[7]

Temporary work agencies (TWAs)

The organization representing TWAs, the International Confederation of Temporary Work Organizations (CIETT), estimated that in 1992 there was a world-wide turnover of US$60 billion, US$20 billion of which was generated in the United States (US$16 billion of this was spent on paying workers recruited by agencies).[8] The hours of work accounted for by these agencies was equal to 1.5 million full-time jobs per year.

The United States market provides an interesting case study, because TWAs have been around for years and are subject to only minimum legal restrictions, so we can trace their development back much further and get a clearer picture. For these reasons, trends registered in the United States are generally seen as being a foretaste of what will happen elsewhere in the world. In the United States in 1970 the turnover of the profession as a whole was US$0.66 billion; by 1992 it had increased thirtyfold to US$20 billion.[9]

Using 1992 as a reference year, it can be seen that if you add taxation on these companies' profits to income tax paid by agencies' permanent staff and workers recruited for assignments, the United States federal and state coffers collected at least three times more in tax revenue from the profession than they granted to the public employment service under its annual current budget.

Elsewhere in the world, the profession's growth over 25 years has been no less impressive, as shown by the figures in the table below.

Some of these growth rates are astounding. In 1992, Brazil, for example, had a network of 18,000 offices, which was undoubtedly a much higher figure than 20 years earlier. Germany (even if the new Länder are included as from 1990)

Growth of TWAs (in terms of number of offices and most recent turnover)

Country	Turnover in 1992 (US$ billion)	Number of offices		
		1992	1988	1969
Belgium	1.3	531	278	92
Brazil	n.a.	18 000	n.a.	n.a.
France	9.2	5 011	3 250	450
Germany	3.5	2 400	1 397	n.a.
Japan	n.a.	9 731	1 580	126
Netherlands	2.9	1 750	1 000	n.a.
Norway	0.13	105	50	13
Switzerland*	0.7	1 000	550	50
United Kingdom*	12.3	9 000	7 500	1 200
United States	20	15 000	7 200	2 300

* TWAs and fee-charging employment agencies.
Source: CIETT and surveys.

nearly doubled the size of its office network in four years. This figure would probably have been even higher if the TWAs, by contrast with the other countries looked at, had not been heavily regulated (the temporary worker must have a permanent employment relationship with the TWA).[10] France has increased its turnover more than a hundredfold in just over 20 years.

The substantial growth of TWAs is borne out even further if you examine the market from a different angle, using different criteria. If one takes the largest enterprises operating in the sector, just charting their results from year to year shows how they are going from strength to strength. The largest enterprise in the sector saw its turnover pass the US$4 billion mark at the end of 1992, four times the figure for 1982. This enterprise, which operates in 32 countries, has generated 325 million hours of work in the world and provided employment for 1.2 million people throughout the year.[11] The next largest multinational went from a turnover of half a billion in 1980 to US$2 billion in 1992, in other words a fourfold increase in 12 years. Over the same period, the number of hours of work created rose from 44 million to 140 million, the total number of branches went from 510 to 1,300 and the international network spread from 11 to 26 countries.[12]

Despite this healthy progress, the number of workers recruited by TWAs is still modest by comparison with the working population. In terms of equivalent full-time employment, workers on temporary assignments represented 1.01 per cent of total employment in the United States in 1992 and 0.6 per cent of the economically active population of all the European Community countries in 1989.

Contract labour agencies

As they are often confused with traditional job contracting enterprises, namely those providing a service or product for a specific purpose or duration, these agencies defy any attempt to count them or measure their activity. Their operations are none the less regularly highlighted (and criticized) in surveys on certain industries and by the members of many ILO industrial committees.

As early as 1980, the Subcommittee on Contract Labour in the Clothing Industry looked into contract labour agencies and expressed its concern at the increasing number of workers in the sector who are employed by them.[13] Other sectoral surveys, using various sources, have subsequently borne out the observations made in the clothing industry.

These agencies have a real hold in the construction industry. In 1990 the number of self-employed or contract workers was estimated at 35 per cent of the total workforce in the sector in Argentina, 20 per cent in Belgium, 53 per cent in France, 25 per cent in Spain and 20 per cent in the United States. A pilot survey carried out in 1988 in the Ahmedabad region of India showed that 97 per cent of construction workers had been recruited by contract labour agencies specializing in this sector.

These agencies also operate in forestry, mining and the petroleum industry. In the United States and Chile, nearly all forestry workers are contract workers (80 per cent in Finland, 60 per cent in France, 50 per cent in Indonesia and Malaysia). This kind of triangular contract between the agency, the worker and

the enterprise in the forestry industry also seems to be developing in other countries, including Germany, Austria, Belgium, Canada and Hungary.[14]

A series of surveys on industrial establishments designed to measure employment flexibility, carried out by the ILO since 1988 in a variety of countries including Chile, Malaysia and Mexico, showed how the use of contract labour was on the increase. In Malaysia, for example, in more than half the enterprises looked at, nearly 20 per cent of their workers were in fact employed by contract labour agencies. In the timber industry, the percentage rose to 57 per cent.

In Peru, household surveys carried out in the same way (and therefore providing comparable results) showed that between 1984 and 1988 the percentage of contract labour had doubled, increasing from 4 to 8 per cent of the labour force. Two sectoral surveys on the petroleum industry carried out between 1985 and 1988 showed that the percentage of the total employed workforce accounted for by contract labour had risen from 29 to 40 per cent.[15] Contract labour agencies seem to have the strongest hold in low-skilled activities. A survey in Argentina shows the increase in the number of workers hired by contract labour agencies for low-skilled activities in the manufacturing industry. In 1988, these workers accounted for 60 per cent of unskilled labour as a whole.[16]

Staff leasing agencies

These relatively new agencies seem to be developing along the same lines as their predecessors. Since 1983 when they were first set up in the United States, they have consolidated their hold on the market there and are poised to spread to other markets open to this type of activity, particularly the United Kingdom, before moving even further afield.

One year after the first structured agency appeared, i.e. at the end of 1984, the number of workers leased had increased fifteenfold, rising from 4,000 to 60,000. Around the middle of 1985, 275 agencies had already been set up and were managing 750,000 workers with a range of skills.

By the end of 1992, seven years later, the number of enterprises had increased fivefold and amounted to some 1,400, with a total of 1 million leased workers. Beating all previous records for growth, the annual growth rate for this kind of agency will, according to the experts, rise to approximately 35 per cent in the next few years.[17]

Some authors[18] see this form of employment as a way of reconciling the creativity and dynamism characteristic of small enterprises with quality in terms of conditions of employment. They forecast that there will be 10 million such workers on the United States market alone before this decade is out. If that is the case, this profession, which was just finding its feet in 1992, will move to the forefront of private employment agencies.

Executive search agencies

These agencies, which grew up in the mid-1960s, cater to the market for high quality and rare skills. They operate on a much smaller scale than TWAs.

Experts reckon that there is a potential turnover of US$2 billion in this sector, with the United States market alone accounting for half that figure.

The growth rate for these agencies, taking in all the markets in which they operate, has been around 25 to 30 per cent on average since the mid-1970s. Over the years, the market has become polarized at the same time as it has expanded geographically. Today, there are two kinds of enterprise operating in different markets:

— multinationals, which have gained a foothold in the most productive markets, i.e. major cities in industrialized countries, and have thus won a comparative advantage in a market increasingly characterized by occupational mobility on an international scale;

— very small enterprises whose profitability often depends on the know-how of a single person and which operate in a market limited to a certain occupation or geographical area.

There are no more than half a dozen multinationals operating in the sector. The biggest of these enterprises, with a network of 43 offices in 22 countries, at the end of 1992 employed 750 consultants and had achieved a turnover of US$130 million.[19]

In order to better meet the need for mobility inherent in this kind of market, the largest enterprises are adopting an aggressive policy of geographic expansion, even moving into markets before they are individually profitable. This explains how these agencies come to exist in countries such as Colombia, Argentina, Brazil, Mexico, Venezuela, Malaysia, Thailand, and most recently, Hungary.

Outplacement agencies

Of fairly recent vintage (the first specialized practices only opened in the United States towards the end of the 1960s), these agencies started out quietly, grew slowly at first and only really took off in the early 1980s. The profession's annual average growth rate in all markets amounts to some 35 per cent.

This type of agency is now in a natural growth phase, and unlike the category described in the preceding paragraphs, has not gone in for major restructuring. The market is therefore dominated by a few large companies which are just starting to become established on the international market, together with many firms which started out small but whose dynamic approach (and a buoyant market) has swept them in less than ten years to the level of major national companies, as well as many small agencies whose profitability again depends on individual know-how. Many agencies involved in private employment management engage in outplacement as a sideline alongside other more traditional activities.

As a whole, the profession's turnover throughout the world was estimated at the end of 1992 at a billion dollars, with the United States alone accounting for a quarter of the market. Outside the United States, the oldest markets are those of the United Kingdom and France, which took off in 1969 and 1973 respectively. These agencies first sprung up in the Netherlands and Switzerland in 1979 and 1980 and since then have spread to ten other countries in the decade from 1983 to 1992. In proportion to the economically active population, the most dense

network of agencies is in the Netherlands, where there are six major national and international agencies and 120 very small agencies, as opposed to the United Kingdom, which only has 150 agencies in total for an economically active population almost four times the size of that in the Netherlands.

Outside the United States, the highest turnover is produced in the United Kingdom, which with US$10 million in 1992 amounted to eight times that of the Netherlands. By comparison, Germany seems to have the fewest agencies; for a population of 80 million, at the end of 1992 there were only 13 firms in operation (only three of them on a national or international scale) with a turnover of US$18 million.[20]

THE REASONS FOR GROWTH

Intrigued by this healthy growth, the many surveys carried out by the ILO since 1988 have done their utmost to understand its cause. There are many complex reasons. The situation as it stands today, when there are many far-reaching changes both in production processes and in the behaviour of institutions and individuals, has seen the emergence of a host of new phenomena which, combined, provide a plausible explanation to the question raised here. Fourteen different factors could be identified as being at the root of the consistent growth of private employment agencies. The following sections will give a brief outline of them. These factors are prevalent and probably occur in most countries. Nevertheless, as it is not possible to examine each individual market, the following analysis obviously cannot assess the impact of each factor in each individual case. Such an analysis, which would certainly be of great interest, will be left to the people who will write national monographs in the future.

The need for flexibility

There are good grounds for seeing flexibility as the leitmotiv of the 1980s, which has been taken up by innumerable researchers and practitioners. Flexibility can be understood as the room for manoeuvre enabling production units to react swiftly to the effects of a twofold transformation in modern societies: changes in technologies raising the productivity of industry plant and, in terms of employment created, causing the service sector to grow more rapidly than industry; and changes in the international distribution of labour which is increasing the comparative advantage, for a growing number of industrial products, of rapidly industrializing countries to the detriment of those industrialized long ago.[21]

This wider leeway for adapting to change, universally welcomed (and increasingly easily obtained) in the business world, means that current procedures and practices are being reassessed. Using flexibility as a pretext, a whole range of what had become standard practices for business over decades have been re-evaluated, only to be rejected in favour of other cheaper methods with less long-term commitment: enterprise-level agreements take the place of collective agreements; hours of work are no longer fixed by general regulations

and are instead adapted to suit the needs of the industry or establishment; procedures prior to recruitment or dismissal are shortened; job descriptions and classification used as a basis for wage negotiations or promotion are given a broader interpretation; collective relationships are rejected in favour of personalized relationships between the enterprise and the workers; and employment contracts are increasingly concluded for a fixed term only. The same need for flexibility can also be seen in economic terms, from price-fixing to inventory-taking, from import contracts to delivery dates.

Although measures to ensure flexibility may not be called into question in so far as the principle is concerned, trade union organizations often raise the issue of their increasing scope over the years, which they see as unwarranted. The fact remains that private employment agencies take advantage of a situation in which flexibility is essential to enterprises. In so far as this is seen as meeting the need for flexibility, especially in terms of supplying workers for a specific purpose or duration, these agencies are viewed by their client enterprises in an increasingly favourable light.

Changes in skills structures

The expansion of the service sectors, technological innovation and the diversification of goods and services as a result of international competition have repercussions on how many and what kind of skills are in demand in the labour market. Just as the rate of economic change accelerates, so changes in skills required speed up and become more far-reaching. The labour market in a changing economy is quite naturally edgy: it criticizes the training system as being too slow to provide skills as needed, it chafes at obstacles to the necessary process whereby staff whose skills are outdated are replaced by others, usually younger, with modern skills, and fights over the few people with the skills it needs, rejecting those without them.

Private agencies have earned a reputation for being best able to react in a nervous market. They make it easier to find staff with rare skills, provide people with the right skills while they are waiting for a job, and advise enterprises and individuals on how to adjust either the supply of or demand for skills to the market situation. Their acknowledged ability to manage occupational mobility in an uncertain and therefore impatient and exacting market has earned the most modern employment agencies a reputation for professionalism and efficiency which consolidates their market position.

Reducing production costs

As production units are crossing borders worldwide, an increasing number of enterprises are having to brave the risks of international competition. As enterprises are then forced to cut back on production costs, they focus more on their main objective, namely production, and delegate subsidiary, non-essential activities to subcontractors. It is ultimately cheaper to use contract labour for peripheral activities for two reasons: calling in specialists enables high levels of productivity to be achieved; and enterprises can more easily adjust the amount of activity they contract out to the economic situation.

An increasing number of employment agencies are offering their services as the best means of meeting enterprises' need to outsource certain activities. They can help in two ways. Firstly, these agencies are highly competent when it comes to selecting and recruiting staff on behalf of enterprises. Secondly, other activities such as invoicing, messenger services and maintenance can be contracted out to these agencies. For a few years, major temporary work agencies have been branching out into other activities, and some are already able to claim a degree of competence in this new contract labour market.[22]

Reducing labour costs

Because they are an important factor in production costs, enterprises are also looking to reduce labour costs. To enterprises, several kinds of agencies' credibility have been boosted by their ability to reduce spending in this area. By careful selection, fee-charging employment agencies and executive search agencies can ensure that the new recruits can adapt quickly to their jobs, thus reducing the cost of having to train them. Temporary work agencies can provide staff for only as long as they are required, in this way helping enterprises to avoid the cost of permanent staff being underemployed.[23] Outplacement agencies show how they can reduce the cost of laying off staff. In so far as staff leasing agencies improve job satisfaction of workers in small enterprises, they too help to bring down costs by reducing staff turnover or absenteeism.

Some agencies, in particular contract labour agencies, also enable employers to cut direct labour costs by offering them the possibility of paying lower wages or social security contributions for workers recruited through them; these agencies capitalize on differences between wages in neighbouring countries by recruiting workers where wages are low, at the wage rates obtaining in that country, and placing them in another country where higher wages are paid.

Changes in organizational methods of enterprises

Far from being limited to physical plant, the process of change has also spread to management methods. Aware both of the need for efficiency and of the deleterious effects of Taylorism, large enterprises have tended to contract out as much as possible of their work, but have reserved innovative management methods for their core permanent staff. They have tried a series of new models based on individual initiative and responsibility, multi-skilling, a high level of initial training, staff rotation and the assignment of interchangeable tasks. With the elimination of the pyramid hierarchy and intermediate supervision, new organizational methods have turned workers into a *resource* deserving individualized treatment and investment in terms of training. Personnel offices and staff relations departments have given way to human resource departments committed to more advanced human resource management practices.[24]

These changes have worked to the advantage of private employment agencies. On the strength of their cultural affinity, they started out by establishing a partnership with these human resource departments, thus setting up the contact network necessary to building up a loyal customer base. Now that

the individual worker is no longer just a person who happened to be placed in a job, but a resource who is aware of and responsible for his actions, character and behaviour have become crucial factors in the selection procedure. The simple and routine practice of hiring has become recruitment, a function calling for sound professional skills. Private agencies owe their strong position on the market to the fact that they have built up a reputation for possessing these skills.[25]

A new role for the State

The State has not been unaffected by the shift in management methods. The inability of some States to solve increasingly complex social problems has led them, under pressure from determined political movements backed by public opinion, to refocus their activity and reduce the scope of their authority to areas where they are uncontested, gradually withdrawing from areas in which they are in competition with the private sector. Once initial reluctance had been overcome, privatization of production activities gathered steam in the eighties, spreading to an increasing number of countries, including those which had taken a stand against it just a few years earlier.

Thus, a favourable environment emerged in which individual initiative was prized and private management methods could thrive. In this context, those who felt that placement should be the sole prerogative of the State suddenly saw their arguments waver, while advocates of private employment management have seen their views confirmed.

Proliferation of agencies

Once they have become established in one country, employment agencies tend to spread to others by a simple process of imitation. Three factors have recently strengthened this natural tendency to spread.

Multinationals, which account for a minority of agencies but are growing in numbers as the profession takes hold and becomes increasingly differentiated, are dedicated to expanding their network. No sooner does one company set its sights on a new market than the others follow suit and a rash of branch offices spring up, motivated either by competition or by example.

Production enterprises from Europe and the United States set up shop in industrializing countries embarking on privatization policies, in particular in Latin America and Central Europe. Having been accustomed to using the services of private employment agencies in their own countries, these companies are prepared to continue using them abroad as well. Once there are enough of them to constitute a profitable market, they attract private employment agencies from abroad like a magnet. In other words, production enterprises from the industrialized countries bring some of their suppliers with them, including private employment agencies, when they set up shop in new markets.

With the consolidation of the European Community and the implementation of the Single European Act, national practices as regards private employment management are slowly but tangibly converging. For a number of reasons, this harmonization has the effect of gradually eliminating the most

restrictive national laws, as the least restrictive practices take hold. As regulations in the Community relax, the natural proliferation of these agencies gains momentum not only in the market of the EC member countries but also in that of the countries aspiring to membership.

Effect of structural adjustment programmes

Under structural adjustment programmes now being implemented in an increasing number of developing countries at the initiative of the World Bank, States are reconsidering their range of activities, leaving more room for private initiative and cutting back state expenditure. This in-depth rethinking of public policy and management methods means that the State is letting go of many monopolies, including that of placement. With the emergence of a legal context in which private employment management can thrive, coupled with an increase in the number of private production enterprises, the markets of these countries are wide open to a growing number of private employment agencies.[26]

Rising unemployment

Industrialized societies and the European countries on the road to a market economy are increasingly hard hit by unemployment, a direct result of economic change. Having long been endemic in the developing countries, it is now worsening in many of them. For the vast numbers of first-time jobseekers, many of whom face the prospect of not finding a job, private employment agencies are another means of entering the labour market, another source of hope.

Regardless of a country's level of development, the unemployment situation has forced an increasing number of jobseekers to look further afield in their search for a job and therefore to resort to private employment agencies. Jobseekers see this diversity of means of entry into the labour market as being in their interests. These agencies' proven track record of finding a first job for many young persons, even if it is a temporary one, enhances their image and strengthens their reputation among important segments of public opinion as institutions with a positive social role.

Effect of the supply of new services

The increasing use of private employment agencies is largely the result of these agencies offering their services, often by dint of the most aggressive marketing techniques. The novelty and originality of the service offered may even give rise to a demand and needs which the market as a whole had not expressed, nor even been aware of until then.

The most recent and striking example of this is the case of staff leasing agencies. This service was offered not as a result of a need felt by small enterprises but out of the initiative and imagination of a group of private entrepreneurs. Once it had been packaged and put on the market, it was regarded with curiosity, then with interest by a number of employers who realized its advantages. A growing need was ultimately felt by these employers once the service was put to the test. Outplacement came into existence in the

same way, as executive search did before it. The way this sector operates thus proves that the volume of the demand for services supplied by private employment agencies may be a direct result of the quality and volume of services offered.

The role of public employment services reconsidered

The public employment services could have stood in the way of private employment agencies. They could have opted for all-out competition, relying on their comparative advantage in that their services were free of charge, pushed back the private agencies' market share and even wiped them out altogether. But they did not, at least in the vast majority of cases. Rising unemployment, a much heavier workload coupled with inadequate increases in their budgets meant that public employment services had to make certain choices. Being the only ones in a position to do so, they naturally gave priority to assisting those among the unemployed who are harder to place, thereby leaving selection and recruitment (especially of the most highly skilled workers) and temporary employment for the other agencies. By staying out of this market just when selection and recruitment techniques were becoming more sophisticated and the need for flexibility more urgent, they allowed private employment agencies to gain an increasingly strong foothold.

Although some of the public employment services had second thoughts, they realized they lacked the private agencies' ability to build up a close and loyal relationship with employers. They then tried, sometimes without success, to build up their image as institutions able to offer services whose quality was on a par with those offered by private agencies.

The State as client

The most important way in which the public authorities can give their stamp of approval is practical rather than legal or administrative. This happens when the State, or in this case its administrative apparatus, becomes a faithful customer of private employment agencies. Business ties between the State and these agencies have been on the increase for nearly ten years now. In one country a temporary work agency regularly provides staffing of ministry meetings and conferences. In another, officers forced to leave the army due to cut-backs are referred to a private outplacement agency. The most unusual example is found in another country, where a private executive search agency was entrusted with the task of selecting the best candidate to head the national employment service.

Private agencies often use these examples as a marketing tool: potential clients are easily convinced of the quality of their services when they prove their ability to meet the requirements of their most exacting client: the State.

Self-regulation of private agencies

The stiff competition in which private agencies operate has led to a spontaneous move to clean up the profession. Competent professionals and

crooks initially operate side by side in an unregulated private employment market. Seeing dishonest operators as a threat to the development of the entire profession, the professionals make every effort to drive them out of the market. Their natural reaction is either to demand clear regulation from the public authorities or to observe codes of conduct which they themselves draft. There are many examples of this self-regulating process in a number of countries. In Argentina, for example, temporary work professionals not only pushed for the adoption of legislation but upheld the principle of issuing operating licences (or approval) on condition that the agency pays a security deposit to be used in the event that it should fail to meet its contractual obligations. These provisions helped root out large numbers of maverick operators who had sprung up on the market. In the United States, the emerging profession of staff leasing agencies was shaken by a rash of phoney bankruptcies perpetrated by makeshift operators out to make a fast profit. Professionals fought back by pushing for an operating licence to be issued by state authorities after screening prospective agencies.

Private employment agencies thus have a golden opportunity to convince public opinion that the profession, far from being inherently evil, has every interest in ensuring that its operating methods are sound and transparent if it is to keep growing. Although by no means unanimous, this argument carries some weight with public opinion and helps to enhance private agencies' credibility and reputation. There is no doubt that this improved credibility has contributed at least as much as the other factors mentioned above to polishing the agencies' image and boosting their growth.

Behaviour shifts

Certain undeniable changes in behaviour have not escaped the attention of private agencies, which have turned them to good profit. Initial hostility and mistrust were gradually dispelled as an increasing number of clients grew accustomed to private agencies and enlisted their services. As the habit took hold, these agencies built up a track record as providers of useful services and gradually acquired an expanding network of regular customers.

Temporary work agencies succeeded in attracting increasing numbers of jobseekers and placing them in a labour market which was growing more difficult to penetrate. In a context in which temporary employment was viewed as an indispensable prelude to permanent full-time employment, vast numbers of young jobseekers have found it to their advantage to try their hand at temporary assignments in various fields and working environments before settling in a definitive job. Other categories of jobseekers also found this gradual entry into working life attractive. Many women workers have found temporary assignments a better way of juggling work and family life, or have used short-term assignments as a means of acquiring the habits and skills they needed to find a lasting foothold in the world of work after many years as homemakers. There is also a minority of workers who use temporary work as a means of alternating between work and leisure in pursuit of a better quality of life.

Notes

[1] An in-depth study carried out in France gives a detailed account of the trends and vicissitudes of temporary employment in this country. See Ramaux, C.: *Le recours à l'emploi temporaire: bilan d'une décennie* (Paris, Centre national pour la recherche scientifique (CNRS), 1992).

[2] Private employment agencies in the United Kingdom are among the most skilled at combining different types of operations, such as placement and temporary work assignments. See the Federation of Recruitment and Employment Services Limited: *1992-93 Recruitment Industry Survey* (London, FRES, 1993).

[3] An interesting analysis of fee-charging placement was made in National Association of Personnel Consultants: *Operational analysis survey: Placement firm profile statistics for 1991* (Alexandria, Virginia, NAPC, 1992).

[4] Data on Switzerland were supplied by the public authority responsible for registering private companies in this country. See Office fédéral pour l'industrie, les arts et métiers et le travail: *Bureaux de placement privés* (Bern, OFIAMT, 1990).

[5] Data on Japan appeared in the documentation prepared by the International Cooperation Agency of the Japanese Ministry of Labour for a seminar on employment administration held in Tokyo in March 1993. See Ministry of Labour: *Papers for the Employment Administration Seminar, Tokyo, March 1993* (mimeographed doc.; limited circulation).

[6] For more information on Bulgaria see ILO: *The Bulgarian challenge: Reforming labour market and social policy* (Budapest, 1993). Regarding the labour market in Zimbabwe, a report which is still relevant today is the African Regional Labour Administration Centre: *The role and nature of private employment agencies in Zimbabwe* (Harare, ARLAC, 1989; mimeographed doc.; limited circulation).

[7] Data on Malaysia and India were drawn from two recent monographs, Srivastava, R. S. and Lee Tuan, T., op. cit.

[8] Since 1988 the Bureau of Labor Statistics has carried out periodical surveys on income distribution in the temporary work sector in the United States. For further information on objectives and methods, see Bureau of Labor Statistics: *First survey of pay and employee benefits in the temporary help supply industry* (Washington DC, BLS, 1988).

[9] Data on temporary work agencies in the United States and Europe were drawn from various sources, including surveys carried out among operators and internal documents of the International Confederation of Temporary Work Organizations (CIETT). See also: Bakkenist Management Consultants: *Comparative study of organized temporary work in the countries of the European Community* (Diemen, 1989) and DRI/McGraw Hill: *A report on the temporary help industry in the USA* (Alexandria, Virginia, 1992).

[10] The volume of business and operating methods of temporary work agencies in Germany are clearly illustrated in Bundesverband Zeitarbeit (BZA): *Zeitarbeit in Deutschland* (Bonn, BZA, 1990).

[11] Data presented in Manpower Inc.: *1992 Annual Report* (Milwaukee, Wisconsin, 1993).

[12] Data presented in ADIA: *Rapport du Conseil d'administration, 1992* (Lausanne, 1993).

[13] For the full text of the conclusions of this Committee see ILO: *Second Tripartite Technical Meeting for the Clothing Industry (1980): Effect to be given to the conclusions and resolutions of the meeting* (Geneva, 1981, mimeographed doc. GB.216/IA/1/9).

[14] Some of the data on contract labour agencies were gathered by the ILO in preparation for submitting to the 258th Session (November 1993) of the Governing Body a proposal to include an item on contract labour on the agenda of a future session of the Conference. See in particular ILO: "Contract labour" (Geneva, ILO, mimeographed doc. GB.258/2/2, paras. 204-245).

[15] These figures came from a survey carried out in the urban area of Lima in Peru; see Verdera, V. F.: *Empleo atípico en Lima metropolitana, 1970-1987* (Lima, Inter-American

Centre for Labour Administration (CIAT), 1992). The study of the Peruvian case largely agrees with another more recent study carried out in Ecuador; see Pita Sevilla, E.: *El empleo atípico en el Ecuador* (Lima, CIAT, 1993).

[16] This figure was given in a recent study on Argentina and Peru; for further details see Marshall et al., op. cit., pp. 24-43.

[17] For more detailed information on the quantitative growth of this profession, see National Staff Leasing Association: *The business of employee leasing* (Arlington, Virginia, NSLA, 1993).

[18] Naisbitt, J. and Aburdene, P.: *Re-inventing the corporation* (New York, Warner Books, 1986).

[19] These data are contained in Korn/Ferry International: *Leadership for the 21st century* (Los Angeles, California, 1993). Additional data are supplied in Russell Reynolds Associates: *An introduction to the company* (London, 1992).

[20] The data on outplacement agencies were checked with three different sources. They are, for France: Buridans, J.-L. and Boutault, J., op. cit., pp. 21-25; for the United Kingdom: Haywood, J. C.: "En Grande-Bretagne, l'outplacement a atteint sa majorité", *Les Cahiers d'information du directeur de personnel* (Paris), third quarter of 1992, No. 22, pp. 45-46; for the other countries: International Association of Outplacement Professionals: *Papers to the 1st International Conference* (New York, IAOP, 1993).

[21] For a highly original study on the reaction of countries industrialized long ago to wage competition from more recently industrialized countries, see Van Liemt, G.: "Economic globalization: Labour options and business strategies in high labour cost countries", *International Labour Review* (Geneva, ILO), 1992/4-5, pp. 453-470.

[22] The diversification of relationships between workers and enterprises is particularly well described in the cases of Canada and the United Kingdom. See Green, F., Krahn, H. and Sung, J.: "Non-standard work in Canada and the United Kingdom", *International Journal of Manpower* (Bradford, UK, MCB), No. 5, 1993, pp. 70-86.

[23] In nominal terms it may be more expensive for an enterprise to use temporary work through an agency, as was clearly illustrated in Bronstein, A., op. cit., p. 298.

[24] In this connection, it is very interesting to learn what certain multinationals well known for the importance they attach to human resources have to say about industrial strategy in coming years. See De Haas, E.: *Past and future developments in Philips*, 21st International Conference of Temporary Work Organizations, Galway (Ireland), May 1993 (Brussels, CIETT, 1993).

[25] A good illustration of the most advanced recruitment methods used in the distribution sector is contained in Clopton, J. D.: "Becoming proactive about recruitment", *Sales and Marketing Management* (New York), Sep. 1992, pp. 90-94.

[26] Structural adjustment programmes such as those carried out in Burkina Faso, Côte d'Ivoire and Senegal have meant that labour code provisions on monopoly of placement have been amended. Sometimes the grant of World Bank loans in the field of labour market management is also accompanied by changes in legislation and practice concerning the public employment service monopoly, as was the case in Turkey in 1992, for example.

CHAPTER IV

LEGAL ASPECTS OF THE PRIVATE MANAGEMENT OF EMPLOYMENT

In order to complete the foregoing economic analysis this chapter endeavours to examine the legal status of private employment agencies. The chapter has five sections. The first recalls the legal aspects of the various types of relationship between such agencies and their clients. The second identifies the legal relationships between these agencies and the public authorities. The third puts forward an interpretation of the agencies' conduct over recent decades in respect of legislation and the motives for such conduct. The fourth offers a brief survey of European Community law and its impact upon agencies' activities within and beyond the Community's borders. The fifth section addresses international law by attempting to evaluate the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96).

LEGAL RELATIONSHIP BETWEEN AGENCIES AND CLIENTS

Agencies' relationships with their clients – workers or enterprises – may take one of five legal forms, with the agencies acting:

— As intermediaries. This is the oldest form characteristic of any brokerage operation. The agencies assist in the conclusion of a private bilateral employment contract by bringing the contracting parties together. It is in this legal form that the agencies conduct their placement and recruitment activities.

— As providers of a service. The agencies sign a bilateral contract to provide certain clearly defined services for which they are remunerated. Remuneration may vary not only according to results but also depending upon the time spent on supplying the service. This is the legal form of the relationship between user enterprises and TWAs, executive search agencies or outplacement agencies. The contract for services may also link an agency and a private individual, as in the case of job-search consultancies, most of whose clients are individual workers.

— As representatives. This applies to an agency's contract with a client – an enterprise or a worker – in which certain powers are delegated. The client transfers to an agency his right to enter into a contract with, and to make a legal commitment to, a third party. This kind of legal relationship normally occurs between career management agencies and their clients and sometimes between TWAs and user enterprises.

— As parties to an enterprise contract. The agency and the enterprise may enter into a contract which provides not only for the supply of a specific service

but also the continuous provision of goods or services, or delegates a particular function. This type of legal relationship occurs for instance between user enterprises and contract labour agencies (and more recently TWAs which have increasingly moved into contracting).

— As an employer. The agency signs an employment contract directly with the worker. This legal relationship is the kind usually established between the individual worker and TWAs, staff leasing and contract labour agencies. In the United States with its legal system based on precedent, case law has established the legal concept of "co-employer", i.e. the principle of the employer's traditional obligations being shared between two parties: TWAs and staff-leasing enterprises on the one hand, and user enterprises on the other.[1]

The activities of certain agencies such as TWAs, contract labour agencies and staff leasing companies are characterized by a triangular legal relationship: with workers in the form of a standard employment contract and with client enterprises in the form of an enterprise contract or a contract for services.

Legal relationship between agencies and public authorities

Agencies may have one of five different types of legal status with regard to the public authorities:

— Status under the ordinary law. Just as any other service enterprise, agencies acquire their legitimacy by being entered in the trade register (or, depending upon national legislation, by registration with the chamber of commerce or the courts), and by declaring themselves to the tax authorities. This, for instance, is the system which has been in force for decades in the United States, since July 1990 in Denmark and since July 1993 in Sweden.[2]

— The status of registered agency. The agency registers with the labour administration. Registration implies the agency's acceptance of special regulations relating to the supervisory role generally assumed by the labour administration. Even if the latter has powers to prosecute in the event of these regulations being violated, it has no authority to grant or withdraw a licence to operate. This system applies in countries such as Brazil and Colombia.

— The status of authorized agency. This is the legal status recommended by ILO Convention No. 96. The agency applies to the supervisory authority (generally the labour administration) for authorization to operate. If the authority judges that the applicant meets certain criteria, it grants authorization in the form of an operating licence (or approval), which requires periodic renewal and may be withdrawn at any time in the event of violation of the regulations in force. This system applies, for example, in Australia, Switzerland, the United Kingdom, and all countries having ratified Part III of Convention No. 96.

— The status of franchise-holding agency. This applies in countries where there is a monopoly of placement. The public authorities may delegate to a (generally non-profit) agency the power to share this monopoly for a particular trade or clientele. Rights and obligations are laid down in a schedule of conditions that the franchisor undertakes to observe and

enforce. The franchise may be withdrawn at any time in the event of a violation ascertained by the supervisory authorities or after due notice has been given. This system applies in Germany.

— The status of government-contracted agency. This status is based on the concept of a contract. In exercising their functions, the public authorities (usually the public employment service) may enlist the assistance of private operators who are given responsibilities for specific categories of the workforce, a trade or a region and for a particular period of time. The authorities sign an agreement with the agency; its text lays down both parties' objectives, rights and obligations. It also states the conditions for the agreement's cancellation or renewal. This legal system is applied in France, for example.[3]

Agencies may also operate outside the law in the strict sense in semi-clandestinity or wherever the legal situation is unclear. Where legislation establishes a monopoly of placement, agencies subjected to such a ban on their activities may decide to carry on regardless, like many service industries, as if they were not affected by the monopoly regulations. They may therefore be listed in the trade register and declare themselves to the tax authorities. Once they have gained recognition in this way, they may commence operations on the market with the intent of obtaining *de facto* recognition from the labour administration prior to possible *de jure* recognition. In 1985, in Japan, a Temporary Work Act was passed legalizing the operation of TWAs that had existed in practice for more than a decade. Similarly, once they have been passed, provisions now under discussion in Italy and Spain and relating to TWAs will give a legal basis to an existing situation and grant full legitimacy to the operations of TWAs which are already numerous and active in these two countries' markets.[4]

The wide range of possible types of status combined with the difficulties inherent in drawing reliable distinctions between private employment agencies and other service enterprises very often give rise to a mass of inconsistencies and major discrepancies in the way they are treated by the law. Different agencies operating on the same market and engaging in related activities may have a different status and accordingly have differing obligations. An agency claiming to offer personnel management consultancy services but whose main activity is recruitment may fall under the ordinary law, whereas another agency plainly stating that it engages in recruitment is immediately classified as a fee-charging employment agency and therefore obliged to apply for a licence with all the constraints that the status entails.[5] Thus, in an ever-changing world of work, agencies may use their identity to their advantage by claiming to engage in one form of activity rather than another in order to obtain the least restrictive legal status.

THE CONDUCT AND MOTIVES OF PRIVATE AGENCIES

Contrary to what is often claimed, private employment agencies are not particularly attached to working in a legally uncertain situation. Indeed, an analysis of their conduct in the past reveals that they seek the backing of some law recognizing their activity and affording them the means of barring unscru-

pulous operators from access to the profession. Nevertheless, although they appreciate the protection and guarantees inherent in such a law, they take exception to the constraints it may entail, i.e. any provisions likely to restrict their freedom of movement and initiative. Throughout recent decades, agencies have thus constantly sought a balance between, on the one hand, legislation establishing and protecting their activities and, on the other, provisions which do not hinder their development.

In a social context where their action is not challenged, such as in the United States or Switzerland, the agencies adapt well to the rules laid down by the ordinary law and voice no need for specific regulations. Yet they have been willing to supplement the measures applicable to all service enterprises by adopting their own rules specific to their field of activity, in the form of a code of professional ethics or good conduct.

On the other hand, wherever their activities are repeatedly challenged or are threatened by the dealings of unscrupulous operators, agencies endeavour to bring about regulations guaranteeing them legal status, stability in their profession and an objective guide to the rules of fair competition. In addition to the cases of Argentina and the United States staff leasing companies referred to in the previous chapter, mention should be made of the more recent examples of Italy and Spain, where temporary employment operators hope for the passing of a bill in their favour.

Another reason why private employment agencies have been seeking the backing of legislation is their desire to overcome the monopoly system. The tactics persistently adopted everywhere by these firms to circumvent monopoly regulations – and thus a ban on their operations – have consisted in demonstrating that the monopoly applied to placement, and that, since their activities could not be called placement, they were not subject to the rules on monopoly. Hence, since the early 1960s, TWAs have put forward sound legal arguments in support of the principle that their activities did not constitute placement, but the leasing of manpower, and that they were therefore not employment agents but employers of workers leased to user enterprises. Adopting a similar approach, executive search and subsequently outplacement agencies also endeavoured to demonstrate that their activities were not those of employment agencies, but consultancy services, and that they should consequently be permitted to operate despite the monopoly rules in force.

Throughout the 1960s and 1970s a large number of countries – including Germany – that had had a monopoly witnessed the adoption of TWA laws, which was considered by these TWAs as a development fundamentally favourable to them, since such legislation implicitly or explicitly reflected their arguments, granted them legal status and placed them once and for all outside the scope of the highly restrictive provisions concerning the placement monopoly. Although not regulated by specific laws, a mass of other agencies, executive search, outplacement and career development or management firms took similar steps and thereby succeeded in gaining recognition as service enterprises and thus being excluded from the scope of job placement monopoly regulations.

Legal protection, however, can work both ways. While regulations may grant legitimacy to firms whose existence was originally challenged and permit them

to operate in a market otherwise closed to them, such texts may also impose rules considered so restrictive that they render operations extremely difficult.

Just as they have worked towards the adoption of laws applicable to them, these firms, and TWAs in particular, have often acted even more vigorously to ensure that such laws do not paralyse their operations. The restrictions fought most fiercely by TWAs are those barring access to certain specific sectors of activity (e.g. the building industry in the Netherlands; in Japan, all sectors save the 18 specified by name); the obligation for user enterprises to submit their reasons for calling on temporary manpower, based on a list of predetermined cases (as in Belgium and France); the requirement that contracts of employment be concluded for periods longer than the worker's assignment (as in Germany); rules limiting temporary employment to the market for high skills (as in the bill under discussion in Italy); and those restricting the number of possible renewals or setting too short a period as the maximum duration for each assignment, etc.

The agencies' efforts over the years to bring legislation to acknowledge their existence have resulted in situations in which monopoly regulations now only apply to fee-charging employment agencies of the old mould. The monopoly concept and its application appear to have become so ineffective that any private employment agency, even one intending to engage in placement, has only to avoid labelling itself as a placement agency in order to circumvent any ban and gain free access to the market.

Even when such a ban is explicitly declared, it does not constitute an insurmountable obstacle for firms determined to do business in a particular market. As the previous section indicates, these firms start out by settling for a semi-legal situation. They then consolidate and perpetuate this *de facto* existence until they feel that it is likely to be legitimized.[6]

European Community law

The EC has produced no legal instrument explicitly encouraging the harmonization of legislation and practice as regards private employment management. The Treaty of Rome, the Community Charter of the Fundamental Social Rights of Workers adopted in 1989, the Single European Act in force as of 1993, the social affairs directives, the many rulings of the European Court of Justice all failed to give any explicit indication of the need to issue harmonized Community guidelines relating to the functioning of the labour market or placement machinery.[7] Therefore, no member State has been required by Community law alone to amend legislation on any placement monopoly; they have all chosen to perpetuate the situation in existence prior to 1958, when some countries observed this principle while others did not.

Throughout the 35 years of its history, the Community has endeavoured to adopt directives to protect workers and has made several attempts to harmonize provisions relating to precarious and temporary employment. In 1984, an initial draft directive on temporary employment and TWAs was lost in the procedural labyrinth and was never adopted. Since then four other attempts have been embarked upon in this or related fields. The first three date back to 1990 and concern "certain employment relationships with regard to working conditions";

"certain employment relationships with regard to distortions of competition"; and "the supplementing of measures to encourage improvements in the safety and health at work of temporary workers". The fourth originated in 1991 and relates to "the posting of workers in the framework of the provision of services".[8] Of these four only the text concerning the safety and health of temporary workers was adopted by the Council in June 1991 and has become Community law. The chances of the three other draft directives being adopted are not considered to be great. Even if they were they would have no major impact in terms of a reduction of the present disparities between member States in the ways in which their labour markets are organized.[9]

The judiciary has greater chances of bringing about changes in law and practice. A European Court of Justice ruling of April 1991 is likely to have a major effect on the way in which member States apply the monopoly concept. When called upon to settle a dispute between private individuals invoking the monopoly principle to challenge the legitimacy of an executive search firm, the court concluded that it was not possible to invoke the monopoly principle when the State – in this case the German Federal Labour Institution – is clearly not in a position to manage effectively and meet the needs of the executive market, and that in such circumstances a private firm specializing in this market may claim the right to operate.[10]

Consequently, while the Court does not challenge each State's right to establish a placement monopoly, it does indicate that this right involves a duty to produce certain results. If this ruling is taken to its logical conclusion, one can assert that by law the establishment of a monopoly is no longer an absolute prerogative held by the public authorities, but a decision contingent upon certain conditions being met, these conditions amounting to an obligation to take effective action. Accordingly, were it to be ascertained that no effective action has been taken, the monopoly would lose its legitimacy. Therefore countries imposing a monopoly but whose public employment service only picks up 5 per cent of the nation's job offers must either improve their service considerably or abolish the monopoly.

The effects of this decision have been immediate: a group of temporary work agencies brandishing this Court ruling and invoking various Community provisions in favour of young persons' access to employment and the free choice of one's occupation and against discrimination towards women have maintained that the restrictions imposed by German, Italian and Spanish legislation on TWA activities hinder the implementation of such provisions. They have lodged a complaint with the Community demanding the abolition of such restrictions. The complaint was being investigated in November 1993.[11]

Evaluation of the role of the Fee-charging Employment Agencies Convention (Revised), 1949 (No. 96)

This standard, which was adopted by the International Labour Conference in 1949 and entered into force in 1951, has been of considerable influence not only in the 41 ratifying States but in many others besides. It gave tangible substance to the concept of a placement monopoly, stating the relations to be

established between the public authorities and private firms, and introduced the concept of and list of possible exceptions to the monopoly. It put forward the idea of different treatment depending upon whether the fee-charging agencies are conducted with a view to profit or not. It also indicated the specific forms of supervision applicable to licensed agencies. Lastly, it set forth the principle of services being provided to workers free of charge; this principle has found its way into the legislation of the vast majority of member States and has since become universal practice.

Since 1973 approximately, this standard appears to have lost a large share of its vitality. In 20 years only nine countries have ratified the standard for the first time whereas over the same period the ILO has registered the accession of some 20 new Members. Out of the nine, five (Djibouti, Ethiopia, Ghana, Suriname and Swaziland) subscribed to the monopoly principle (Part II). On the other hand, in 1992 five countries availed themselves of the possibility of denouncing this standard (Finland, Germany, Sweden, Côte d'Ivoire and the Netherlands – the two latter countries' denunciations of Part II being immediately followed by the ratification of Part III), thereby placing this Convention amongst those which have registered the highest number of denunciations in proportion to the number of countries having ratified it.

Over the years this standard has accumulated a series of shortcomings. The first is the natural process of becoming dated since, at the time of its adoption, 12 of the 16 types of agency listed in Chapter II of this report did not exist and one had only just emerged in the previous year. A second shortcoming, derived from the first, resulted from the narrowness of the Convention's scope: it only referred to one type of legal relationship – that of intermediary – between agency and client, whereas at least three more were to evolve; the standard also advocated only one form of legal relationship between agencies and the State, that of authorized agency (or agency holding a licence to operate), whereas as stated at the beginning of this Chapter, other more flexible and administratively less restrictive kinds of relationships were to emerge and become established.

The narrowness of its scope has in turn given rise to opposition and ambiguities detracting from the instrument's credibility. Bound by the opinion voiced by the Director-General in 1966 and confirmed by the Committee of Experts as to whether TWAs fell within the scope of the Convention, the ILO has always maintained that such agencies were indeed covered by the definition set out in the text and that their existence was authorized under the provision for exceptions in Article 5. On the other hand, in the view of the great majority of countries having ratified Part II, the activities of such agencies fell outside this instrument's scope. This ambiguity has therefore persisted since 1966; the ILO (including the Committee of Experts) and countries reporting on the application of the Convention have passed different legal interpretations of TWAs' status back and forth, unable to break out of the deadlock.

Following the example of TWAs, other kinds of agency have voiced the opinion that they too did not conform to the definition presented in the standard and therefore did not fall within its scope. By identifying themselves as service enterprises they circumvented the legislation based on the Convention and proliferated in all markets, including those subject to a placement monopoly. Thus, while the standard urged the progressive elimination of

fee-charging employment agencies as the public employment services' supremacy became established, the trend witnessed in the great majority of countries over 20 years has moved in precisely the opposite direction: towards the predominance of private employment agencies and the relative decline of public employment services.[12] The way in which practical reality has challenged the objective set forth in the standard has doubtless prompted a number of countries to denounce it.[13] Many other countries, whilst refraining from denouncing it, decide when drafting their periodic reports on application to skirt round or not to mention the growing ascendancy that private firms have over the labour market.

Though Part II of the Convention is showing clear signs of becoming dated, one might assume that Part III still remains relevant today. This does not appear to be the case. The instrument stipulates that the State shall conduct its supervision by requiring agencies to submit their scales of fees and expenses and to apply annually for the renewal of their licences. This kind of control is seen by many as being much less important than other forms. Adopted at a time when price control was the customary tool used by the State to enforce its authority over the market, the submission of scales is a measure which is perhaps useful in certain situations to avoid the most flagrant forms of abuse but is superfluous in many other cases since market mechanisms normally keep these scales within a range acceptable to clients. Moreover, the annual licence renewal places the agencies in a persistently precarious position and discourages the investment required to enhance the firms' reputations. In this way the principle of annual renewal runs counter to the objectives of professionalism and reliability, which are precisely what the Convention seeks to promote.

Other forms of supervision which appear infinitely more important today are not mentioned in the instrument. The supervision of (a) the confidential treatment of personal data held by agencies, (b) testing and selection techniques, some of which are strikingly abusive and unorthodox, (c) the veracity of job offers appearing in the press (some agencies use such offers as "bait" enabling them to compile and operate computerized databases of candidates), and (d) the recognition of the acquired rights of workers recruited by agencies in the event of such agencies defaulting is all part of the measures likely to appear in a standard reflecting present-day realities.

A new standard might also recognize the efforts made by agencies to regulate their sphere of activity and to ensure observance of codes of good conduct specific to each type of agency.

Notes

[1] For a more detailed discussion of the origin, evolution and present content of this concept see Lenz, E. A.: *Co-employment: A review of customer liability issues in the staffing services industry* (Alexandria, Virginia, National Association of Temporary Services, Law and Public Policy Series, 1992).

[2] For more complete information on the systems applying in Denmark and Sweden see respectively "Liberalization of placement activities in Denmark", *Infor MISEP* (Maastricht, European Centre for Labour and Society), No. 30, Summer 1990, pp. 15-16; and *A Bill concerning private employment agencies and hiring out of labour*, Compendium of Bills submitted to Parliament (Stockholm, doc. Prop. 1992-93: 218, 1993).

[3] For a more in-depth discussion of the legal aspects inherent in the organization of the labour market as a whole, see Gaudu, F.: "L'organisation juridique du marché du travail", *Droit Social* (Paris, Editions techniques et économiques), No. 12, Dec. 1992, pp. 941-951.

[4] For a survey of the legal argument behind regulations on temporary employment in Spain and Italy, see respectively Valdés Dal-Ré, F.: "Las empresas de trabajo temporal: notas de un debate no tan ajeno para un próximo debate propio", *Relaciones Laborales* (Madrid), No. 7, Apr. 1993, pp. 1-8; and Dalmasso, C. M.: "Prime considerazioni sul rapporto di lavoro interinale", *Lavoro e Previdenza Oggi* (Rome), Jan. 1993, pp. 7-9.

[5] An interesting discussion has been held in France on the diversity of forms of legal status held by firms conducting closely related operations. See Rousseau, Y.: "Conseils en recrutement, chasseurs de têtes, et notion de placement", *Droit Social* (Paris, Editions techniques et économiques), No. 6, June 1990, pp. 545-557.

[6] The specialized press regularly reports on the real situation of temporary employment agencies in Italy and discussions on the issue. Among the many articles on the subject, the most important include Orioli, A.: "Il primo lavoro lo voglio intermittente", *Cerco Lavoro Giovani* (Milan), 7 June 1993, p. 5, and "Per l'occupazione una cura di flessibilità", *Il Sole-24 Ore* (Milan), 4 July 1993, pp. 4-5.

[7] For a more general discussion of the impact of Community law on French national law in the social field see Hennion-Moreau, S.: "L'influence du droit social communautaire sur le droit interne", *Droit Social* (Paris, Editions techniques et économiques), No. 7/8, July-Aug. 1992, pp. 736-743.

[8] For the complete texts of these draft directives see the following documents of the Commission of the European Communities: COM (90)228 final – SYN 280 and SYN 281 (Brussels, 13 Aug. 1990) and COM (91) 230 final – SYN 346 (Brussels, 1 Aug. 1991).

[9] For more complete information on the background and content of European Community law relating to temporary employment in particular, see de Blanpain, R. (ed.): *Temporary work and labour law of the European Community and Member States* (Deventer and Boston, Kluwer Law and Taxation Publishers, 1993).

[10] For more detailed information on the content of the ruling see: "Judgment of the Court (Sixth Chamber) of 23 April 1991 in case C-41/90 (reference for a preliminary ruling of the Oberlandesgericht München): Klaus Höfner and Fritz Elser versus Macrotron GmbH", *Official Journal of the European Communities* (Brussels, EEC), C 132, 23 May 1991, p. 7.

[11] For more details on the legal argument in support of this complaint see William M. Mercer S.A.: *Complaint to the Commission of the European Communities concerning breach of European Community law by certain Member States and certain state monopolies in relation to temporary work bureaux in the European Community* (Brussels, CIETT, 1992).

[12] The compatibility issue between the ratification of Part II of Convention No. 96 and the increasing opening up of the labour market has been analysed in France in an interesting study by Lyon-Caen, G.: *Les libertés publiques et l'emploi*, Rapport pour le Ministère du Travail, de l'Emploi et de la Formation professionnelle (Paris, MTEFP, 1991), pp. 36-53.

[13] Prior to Sweden's denunciation of Convention No. 96 a Committee of Experts was called upon in that country to conduct an in-depth inquiry into labour market trends, the role of private agencies and the most appropriate decisions to be taken in the field of national and international law in particular. For more details see: *Privat förmedling och uthyrning av arbetskraft* (Stockholm, Arbetsmarknadsdepartementet, 1992).

CHAPTER V

THE CONTROVERSY OVER THE ROLE OF PRIVATE AGENCIES

Since this chapter has to consider the role of agencies in the functioning of markets, it cannot base itself, as did the previous ones, on objective facts or put forward an interpretation based on objective facts. It will have to venture out into the arena of partisan opinions and take account of the long-term debate that has confronted those who are for and those who are against private employment agencies. Over the years, a number of studies have attempted to quantify objectively the impact of these agencies on the functioning of markets.[1] However, depending on their conclusions, these studies were pressed into service by one or the other of the two opposing camps to support essentially ideological arguments, i.e., either by the trade unions (often aligned with those in charge of public employment services), or by the agencies themselves (often aligned with employers' organizations).

Against this background of irreconcilably divergent opinions, all this chapter can do is to present the points of view and arguments of each side (in most cases in their own terms). This is what the first two sections of this chapter will attempt to achieve, whilst a third aims to put forward a possible conclusion to the controversy.

THE ROLE OF AGENCIES ACCORDING TO THEIR DETRACTORS

For decades, the opponents of agencies have justified their case on purely ethical grounds. Over the past 20 years or so, the moral argument has been shored up using extensive data from surveys undertaken in response to complaints by workers and from comparative studies of the functioning of various types of market. Backed up by a constant flow of specific examples, the case put forward by the agencies' opponents has gradually been built into a serious plea for a ban on these agencies. Eight powerful arguments go to make up the main thrust of this plea, and the following paragraphs will look at them one by one.

The top-slicing effect

Driven by the profit motive, private employment agencies are interested only in jobseekers ripe for recruitment. Those least amenable to being integrated into the market, i.e. young persons without training, the long-term unemployed and underprivileged workers in general, are systematically neglected since they are viewed as customers for the public employment service. The private agencies consider that the main role of the public service is to cater to this group, to

provide a replacement income to those out of work, and to offer guidance and training programmes to bring them up to an employable level.

In this way, by their very existence, private employment agencies split the labour market into two: those fittest for work, who are skimmed off by the private agencies, and those less fit, who are entrusted to the public service. Looked upon as a purveyor of social assistance, the public service can no longer present itself as the instrument of state economic policy, and has to relinquish its position of labour market regulator. It is claimed that this natural division of roles between the public service and private agencies is prejudicial to society as a whole, since experience shows that the public service would be all the better placed to tackle social matters if employers as a whole considered it credible, both technically and professionally, and capable of putting forward what they view as effective solutions to their recruitment and human resource management problems.

Shifting company in-house training to the community

Because of the aggressive tactics of private agencies constantly striving to capture ever larger market shares, employers are inclined to enlist their services at the first sign of the slightest need for new skills. Ever ready to supply the skills demanded, private agencies encourage employers to get rid of employees lacking the required skills and replace them with others who are better equipped. Rather than investing in in-house training to update their employees' skills, employers are encouraged to make up for internal skill shortages by speeding up labour turnover, i.e. through dismissals followed by new recruitment.

Just as living beings breathe in oxygen and breathe out carbon dioxide, enterprises, at the instigation of private agencies, speed up their "respiration", so that frequent inflows of young, highly skilled workers are followed by the elimination of others who are older and have outdated skills.

Accelerating occupational mobility

Occupational mobility is the employment agency's stock-in-trade. In the same way as a totally static labour market would do away with the very reason for their existence, an extremely mobile market offers increased opportunity for mediating between supply and demand and, consequently, more frequent openings for profit. Their strategy as commercial enterprises therefore drives them to accelerate labour mobility, not in order to ensure optimal job assignment of human resources but rather to optimize their profits.

As seen above, this same behaviour encourages enterprises to replace in-house, worker-friendly retraining and skill enhancement programmes by high rates of labour turnover, and spurs agencies on to accelerate labour market mobility by any means whatsoever. No sooner do they place workers in a job, than they whisk them away to a better one, only to take them back again and place them in an even better job. This is a practice that fits in well with the logic of a commercial enterprise, but it may be detrimental to the good functioning of the labour market as a whole.

Faced with a skills shortage, private agencies have no interest in remedying the situation through retraining programmes. Instead their interest lies in perpetuating the shortage since this boosts the value of the supply, making it possible to move workers with skills in high demand more frequently from one job to another. For these agencies, rate of job change is the prime consideration, especially when job rotation pushes up wages and hence their percentage cut, increasing their turnover.[2]

Aggravating precariousness

Quick to respond to enterprises' need for flexibility, private employment agencies, and in particular TWAs, offer flexible strategies for taking on additional workers only for the period during which this manpower is needed. Other firms, in particular contract labour agencies, offer their clients the possibility of outsourcing some of their operations at lower cost to the enterprise.[3]

It is obviously in their own interest for these agencies to promote greater use of temporary or contract workers. Thus, although they were initially supposed to meet an objective need for flexibility, these agencies then use flexibility as a pretext to get enterprises to replace ever larger layers of their permanent staff by temporary or contract workers.[4] Precariousness in employment, it is said, is the product of labour market flexibility requirements. In effect, however, it is nurtured both by the need for flexibility and by the direct action of certain private employment agencies to promote this precariousness.

What is more, to the extent that increasing numbers of precarious jobs lead to the development of a more mobile labour market, precariousness eventually benefits not only the TWAs and contract labour agencies but all the others as well.

Scattering labour market information

Private employment agencies have a doubly harmful effect on labour market information. In a monopoly situation, all the job vacancies coming on to the market converge on a single institution, the public employment service. This concentration of information offers all jobseekers equal access to available jobs. In contrast, the multitude of private agencies on the market markedly disperses this information, to the advantage of workers who have access to it and to the detriment of all the rest. Thus, by their activity, private agencies inhibit the application of a basic principle of democracy: equality of opportunity and treatment in employment.

Moreover, the proliferation of actors in the labour market makes it difficult, if not impossible, to collect information on jobs wanted, vacancies and placement. It is widely accepted that this information is essential for an understanding of the current and, by forecasting, future functioning of the market. Operating independently and scarcely interested in sharing the information they have collected, private agencies are guilty of wasting this information. They hamper the efforts of the public authorities to use a tool which is indispensable for their decision-making and market-regulating roles, and thereby undermine the sound functioning of the labour market.[5]

Negative effects of competition

Although competition is usually considered healthy, that between private employment agencies is more conspicuous by its overall negative effects. Alongside the large, well-established agencies with transparent practices and operating within the law, there is a multitude of other, barely profitable firms which more often than not are fighting for survival. Threatened with bankruptcy or simply trying to consolidate their market position, some agencies are prepared to manipulate figures, declare incorrect data to the authorities, pare back the benefits to which employees are entitled, renege on their obligations and even arrange fraudulent bankruptcies.

Whilst admittedly there is a natural tendency for these firms to mature and clean up their business practices, the various professions achieve maturity only slowly and often only after having committed innumerable abuses and harmed countless employees. Similarly, when they eventually fall prey to market forces, agencies which are driven to bankruptcy usually leave behind a grim record of commercial damage and personal harm.

Undue complicity with employers

Throughout their existence, the better private employment agencies have been able to master or get round the laws regulating them, the better their development has been. Their skill at uncovering and exploiting loopholes in the regulations has become a sign of sound business practice and proof of professional competence. This tendency to slip through the rules has left a deep mark on their business ethics. When concluding contracts with their clients, they have naturally offered to place this competence at their service. Client firms have thus come to appreciate agencies' willingness to take on the risk of breaking the law on their behalf.

When an enterprise finds provisions against racial or sex discrimination, for promoting the recruitment of disabled workers, or for contributing to a workers' training fund too constraining, it turns to a private employment agency which finds a way of relieving it of the burden or at least lightening the load. Whereas the client enterprise looks on the public employment service as the representative and guardian of the law, private agencies are seen as partners that will grow into accomplices, suppliers who will be prepared to consider any request, however irregular, as acceptable and legitimate, and be willing to carry it out.

As a result of this natural complicity linking agencies and their clients, governments have to realize that private employment agencies, far from being an instrument or vector of their social policy, as the public employment service might be, tend instead to act as an obstacle to this policy.

Private agencies' record of abuse

Private agencies can no longer claim the benefit of the doubt. Wherever they have had free rein, they have accumulated such a record of abuse that no government can reasonably count on their good faith or rely on their usefulness. The archives of every trade union are filled with complaints about them.[6] In the

face of such overwhelming evidence, there is no need for theoretical analyses to come to the conclusion that there is something inherently wrong with the private management of employment.

No modern democratic society can allow its most vulnerable members, jobseekers, to be exposed to being used by persons out to profit from people's distress. The task of helping the least privileged should be performed in the spirit of a public service, free of charge, unbiased and open to all. Depending on the circumstances, the provision of this service may be delegated to non-profit organizations which have given prior proof of their good faith. Monopoly of placement is a fundamental principle which is a measure of the importance that a modern society attaches to the ideal of justice. It is therefore an inalienable principle, to which exceptions may be made, but which should never be betrayed.

THE ROLE OF AGENCIES ACCORDING TO THEIR ADVOCATES

The defence of the role of private agencies is based on seven arguments, the gist of which is given below.

Experimentation and creativity at a time of transition

A period of transition such as the one we are currently living through, which is rapidly transforming technology, organizational methods, job content and mentalities, requires the public authorities to mobilize all of society's capacity for imagination and creativity. Under the impact of these sweeping changes, existing patterns of education, access to employment and further training also need to be renewed. Faced with the challenge of an uncertain future, labour markets must be able to rely on forces capable of experimenting with new ways of matching people to jobs.[7]

Once institutionalized, the monopoly of placement would immediately stifle the initiative and dynamic approach displayed by private agencies, which have already demonstrated their ability to understand new work structures and adapt to them. Any society that deprives itself of this creative input just when it needs it most, and instead allows a public employment service to dominate the market, would be acting criminally. It would be handing over priority to an organization known for its unwieldy and bureaucratic procedures, suited perhaps to putting the world of work onto the same regulated tracks, but certainly not to a visionary approach to the future.

A look back into the past suffices to show that not one of the innovations in labour market management, whether job search techniques, computerization and telecommunication of job offers or methods of skills assessment, would ever have been adopted by the public employment services if they had not been first devised and implemented by private agencies.

Improved functioning of the market as a whole

The combined action of private agencies and the public employment service leads to a labour market that functions better than if it were in the sole hands of

the public service. By maintaining permanent, close links with their client enterprises, private agencies ensure that a large number of job vacancies are displayed on the market. Without their intervention, these vacancies would not reach the public service but would be made known only by word of mouth to persons in close proximity to the employer, and then filled confidentially. By contributing to the transparency of the market in this way, private agencies not only do not raise obstacles but rather smooth out the path to employment.[8]

Furthermore, job information is better disseminated by multiple sources than by a single organization. The further companies progress along the path of modernization, the greater the justification for the role of the private agencies. Rapidly developing, competitive markets that have to respond to multiple and changing needs and produce goods and services of ever higher quality for an increasingly demanding clientele, by their very nature, find it necessary to turn to specialized agencies attuned to enterprises' needs and able to rapidly meet their manpower recruitment and renewal requirements.[9]

Private agencies are well known for their ability to fill posts more rapidly than can public services. By reducing the time a job remains vacant, they contribute to the economic health not only of the client enterprise but of society as a whole.

Lower cost/benefit ratio of monopolies

A government forced into difficult choices by budget restrictions cannot fail to weigh the cost of a monopoly against the benefits hoped for. In particular, it will have to compare cost, in terms of expenditure, with benefits, in terms of reduced unemployment rates. The cost of instituting the monopoly can be calculated by comparing two extreme situations: one which places a minimum of constraints on the establishment of private agencies (as in the United States), and one which imposes maximum constraints and bars private employment agencies of any type from entering the market.

In the United States private agencies have a combined annual turnover of US$30 billion, pay the State at least US$6 billion in taxes and employ 2.6 million people. Supposing the United States were to decide on introducing a monopoly in the strictest sense, it would have to forgo US$6 billion in tax revenues, raise the budget of its national employment service from US$1 billion to US$10 billion (by way of comparison, Germany's budget for the purpose is US$45 billion for a population only a quarter of that of the United States, but it includes programmes which, in the United States, are financed by several organizations) and find new employment for a group of workers equivalent to 1.4 per cent of its active population. It could be expected to cost a country the size of the United States some US$15 billion to convert from a liberal market to a monopoly system.[10]

To justify expenditure of this size, the introduction of the monopoly would have to substantially reduce unemployment. Since the situation in markets with monopoly systems does not give reason to expect such a result, any proposal to move from a liberal to a monopoly system would find few takers.

Obviously, if steps were taken in the opposite direction to move from a monopoly to a liberal market system, cost estimates for the monopoly would not

produce equivalent figures. None the less, with all other variables being equal, the institution of a monopoly can in no way be justified in purely financial terms.

The legal argument

There is a strong legal argument against the elimination of private employment agencies. Legally, the presence of private agencies is a direct extension of the recognized right of employers to draw up a private contract of employment with a person or persons of their choice. If an employer is free to recruit, he must also be free to decide the form this recruitment will take and, in particular, to delegate this function to a person or body of his choice.

In this respect, the monopoly imposes a fundamentally discriminatory recruitment practice. In a monopoly system, a very large industrial group which sets up a specialized department within itself to bring together, using the most up-to-date techniques, all the group's staff selection, recruitment and retraining activities would be acting perfectly legally. A small enterprise lacking the means to set up a specialized department but wishing to entrust an outside firm with the same selection, recruitment and retraining activities would, on the other hand, be acting illegally. Looked at like this, monopoly places small enterprises at a disadvantage — and these are the very firms that society is expecting to create the most jobs.

The historical and industrial sociology argument

The detractors of private agencies often adopt a mental approach which has scarcely changed since the time of the industrial revolution, and which leads them to see these agencies as a den of unmitigated crooks. In reality, as we see from history, enterprises and professions evolve, as individuals and societies do. They forge for themselves a culture, traditions, working practices and an ethic. They can improve, consolidate their foundations and expand, they can diversify and follow different growth patterns, just as they can wither and die.

For 50 years now, private employment agencies have been engaged in a long process of cleaning up their business practices. They have set up self-regulating machinery to protect the profession and launched training programmes for their worker clients. Far more than other less controversial professions, they have made efforts to live up to the expectations of their clients and society. Admittedly, there have been lapses of conduct, as in any human organization. However, if merely drawing up a list of lapses of conduct sufficed to condemn a whole profession out of hand, then many economic sectors would be in for some severe punishment: for example, the whole private merchant marine would have to be banned just because one company or another has, at some time, done some smuggling.

State abuses

Certain States miss no opportunity to stigmatize the abuses committed by private agencies. Obviously, they are not as outspoken about their own. The

most serious abuse they can commit against the world of work is to ban private employment agencies from operating in the market and to offer the market the sole alternative of an ineffective and parasitic public employment service.

They live under the illusion that, in the absence of private agencies, employers would automatically place all their job vacancies with the public service. However, when employers are confronted with red tape where they expected professional cooperation, they give up, regardless of whether there are any private agencies to turn to instead. Consequently, when States decide both to impose a monopoly and to make do with a sluggish public employment service, they are abusing their populations in the worst of ways — by preventing the labour market from thriving and by compelling employers and workers to resort to manpower recruitment and renewal practices unworthy of a modern society.[11]

For the labour market to function correctly, it needs millions of rapid and effective operations each day. Since, in a fluid and complex world, no State, however rich and committed it may be, can alone respond to every need within a reasonable time, it has the duty to allow the most competent professionals to provide the required services. Looked at from this angle, monopoly in itself has all the features of an abusive practice. This is especially true of a rigid and cumbersome public employment service.

The market has the last word

If one believes in the intrinsic wisdom of market mechanisms, it cannot be denied that the market has opted definitively in favour of private employment agencies. This is borne out by the extraordinary way in which their business is thriving, the growing number of countries amending their legislation to permit their operation, and the absence of cases in which countries, regretting their decisions to liberalize the market, have reverted to more restrictive practice.

A profession cannot grow with such consistency unless it has gained the acceptance of all the parties involved in its activity. The absence of any rejection response from either the supply or the demand side clearly indicates that these agencies meet a shared need of employers and workers, and that their proven ability to meet this need is as valid a judgement as any that can be made on their activities.

It is symptomatic in this respect that the opposition expressed by the trade unions is neither unanimous, nor has it been taken up systematically by their members.[12] Some of them have had no hesitation in signing collective agreements with employment agencies, in particular TWAs. Moreover, the fact that production enterprises or cooperatives financed by the trade union movements sometimes enlist the services of private agencies is quite revealing of the change that is taking place in the behaviour of some trade union movements.

A POSSIBLE WAY OUT OF THE CONTROVERSY

For years, neither side to the debate on private employment agencies has succeeded in gaining the upper hand on the sole strength of their arguments. The

motives and objectives of each side have stood the test of time and have remained valid to a certain extent. Nevertheless, it is becoming clear that, from the purely practical point of view, policies banning private agencies' access to the market are increasingly difficult to put into effect.

Private agencies have gained a foothold in the markets amidst such a tangle of rules and activities that it has become virtually impossible to draw a line separating those that would be banned from those that would not. The distinctions between placement, recruitment, personnel management consultancy, provision of services under contract, contract labour, staff leasing, temporary assignment and secondment are already difficult to comprehend from the conceptual point of view; any attempt to apply them in practice is bound to be arbitrary. How is it possible under such circumstances to decide which agencies to ban?

To be consistent, the prohibition would have to apply across the board to every agency, irrespective of its degree of involvement in the functioning of the labour market. However, legal surgery such as this runs the risk of cutting deep into the flesh of the profession and could mean a death sentence for many small specialist consultancies. A narrower ban covering only placement offices would make it extremely simple for any of the agencies involved in different but related activities to skirt around the prohibition.

If the ban were total, it would have devastating contrary effects: unemployment would soar in the profession, and major increases would need to be made immediately in the public employment service budget to enable it to take the place of the banned agencies. A partial ban, on the other hand, would fuel discord, drag the authorities into exhausting legal actions and ultimately result in a situation such as that which already exists in a number of countries, where, in spite of prohibitions, private firms force their way onto the market, proliferate chaotically and cause the authorities to lose control over the national labour market.

Now that it is clearly no longer practicable, the prohibition approach should reasonably be discarded. But how can this be done without at the same time abandoning the principles that inspired the supporters of a ban, i.e. the principles of protecting vulnerable unemployed workers, of defending the interests of all those involved in the labour market and not just those of private groups, and of equal opportunity in employment for all? This is certainly the heart of the problem. Our hopes of finding a way out of this controversy which has exercised so many minds for so many years depend directly on our ability to come up with a valid answer to this question.

The problem is to define a model of labour market organization that will reconcile the activity of private agencies with the priority of public over private interests. Formidable as it may seem, the problem is not insoluble. To start with, a definition of the model should be based on a number of clear principles.

The public authorities should obviously not refrain from supervising, guiding and intervening in the labour market for the collective good. However, instead of acting alone in all areas, they could leave room for other institutions, including private agencies. Relying not only on sanctions but also on other modern management techniques, such as incentives, cooperation, competition and demonstration by example, the authorities could guide the action of private

agencies in the direction they wished. By enlisting healthy forces in the private employment sector, the State could replace the traditional climate of confrontation with a relationship of understanding and complementarity.

However, the major difficulty lies in moving on from principles to an actual operational model. This will be the subject of the last chapter of this study.

Notes

[1] A large amount of research has been devoted to the comparative analysis of private employment agencies in different labour markets. Amongst the most recent and significant are: Egle, F. and Zahn, E.: "Arbeitsmarktausgleich: Verbesserung durch Abschaffung des Vermittlungsmonopols?", in *Wirtschaftsdienst* (Mannheim), No. III, 1992, pp. 138-144; Walwei, U.: "Viele Wege führen nach Rom", in *Materialen* (Nuremberg, Institut für Arbeitsmarkt und Berufsforschung — IAB), No. 4, 1991, pp. 2-9; and a very interesting article by the same author, "Job placement in Europe: An international comparison", in *Intereconomics* (Bonn), Sep.-Oct. 1991, pp. 248-253; Pérez-Espinosa Sánchez, F. and Martín Serrano, A. L.: *Otras formas típicas de contratación laboral: especial referencia a las empresas de trabajo temporal* (Madrid, Universidad Complutense, 1992). For an analysis of the effect of EEC harmonization on the placement monopoly and the role of public employment services, see Egle, F.: *European integration and impacts on labour market*, paper read at the seminar on European integration and the labour market, Kehl, 4-6 March 1992 (Mannheim, Fachhochschule des Bundes für öffentliche Verwaltung, 1992; mimeographed doc., limited circulation).

[2] This point of view is presented brilliantly in Engelen-Kefer, U.: "International labour standards and economic development: The role of public labour administration", in *Labour and Society* (Geneva, International Institute of Labour Studies), No. 1, 1990, pp. 89-98.

[3] The replacement of permanent jobs by temporary jobs is increasingly affecting labour markets traditionally linked with employment stability, such as that in Japan. For a good illustration of these replacement methods, see Befu, H. and Cernosia, C.: "Demise of 'permanent employment' in Japan", in *Human Resource Management* (New York, John Wiley & Sons, Inc.), No. 3, Autumn 1990, pp. 231-250.

[4] The increase in precarious work has been well illustrated in Confederación sindical de comisiones obreras: *La década flexibilizadora: evolución del mercado del trabajo en los últimos seis años 1987-1992* (Madrid, CCOO, 1993).

[5] Adherence to the principle of the monopoly in view of the need to control information has been clearly expressed by the Swedish Confederation of Professional Employees. See Tjänstemännens Centralorganisation: *Our knowledge will form the future of Sweden: Programme for TCO 1990-1993* (Stockholm, TCO, 1989).

[6] Reviewing the question, one of the most representative German unions (Deutscher Gewerkschaftsbund — DGB) points out by way of example that in 1991 in a single *Land*, North Rhine-Westphalia, 14,357 labour legislation infringements were attributed to TWAs. See "Auswirkungen von Leiharbeit auf die Beschäftigten", in *Soziale Sicherheit* (Düsseldorf), No. 3, 1993, pp. 82-83.

[7] For an original look at the need to experiment with new solutions for the labour market alongside conventional approaches to devising and testing solutions, see Freedman, A.: "Managing contingent workers", in *Unconventional Wisdom* (New York, A. Freedman and Associates), Apr. 1993, pp. 1-4.

[8] The question of opening the market to private agencies at the European Community level has been the subject of a declaration of principle by employers' organizations. See in this context Union of Industrial and Employers' Confederations of Europe: *UNICE's ten conditions for more employment* (Brussels, UNICE, 1993).

[9] For an analysis of new recruitment methods that are emerging in this period of change, see Wiley, C.: "Recruiting strategies for changing times", in *International Journal of Manpower* (Bradford, MCB University Press), No. 9, 1992, pp. 13-21.

[10] The total annual turnover of all private employment agencies together was calculated by assuming that the turnover of the TWAs, which amounted to US$20 billion in 1991, accounts for two-thirds of the turnover of all firms taken together. This is a very conservative estimate, since the actual turnover is certainly much higher. The tax take has been estimated at around 20 per cent of turnover. This is tax revenue collected as company tax and income tax levied on agency employees. This too is a very conservative estimate. The number of employees was calculated by adding up the figures given by the Bureau of Labor Statistics: *Employment and wages, annual averages, 1991* (Washington DC, BLS), Bulletin 2419, Jan. 1993, pp. 462-463. The economically active population of the United States is estimated at 190 million. The data of the German Federal Labour Institution are taken from *The Bundesanstalt für Arbeit introduces itself* (Nuremberg, BfA, 1989, updated in 1990 and 1991).

[11] For a consideration of the inability to devise an active labour market policy in Italy and its effects, see Dell'Aringa, C.: "Solo misure tampone se l'economia non 'tira'", in *Mondo Economico* (Milan, Società Editoriale Il Sole-24 Ore), 14 Nov. 1992, pp. 45-47. On the functioning of the employment agencies and the need to refurbish them, see Picchio, N.: "Le Agenzie vanno riformate", in *Mondo Economico* (Milan, Società Editoriale Il Sole-24 Ore), 6 Feb. 1993, p. 19.

[12] The moderate stand taken by the Swedish Confederation of Professional Employees towards private employment agencies is all the more interesting in that it marks a change from their position a few years ago (see Note 5 above). See TCO: *Private employment agencies and labour leasing, submission to the Ministry of Labour concerning the report of the Commission of Inquiry on the Deregulation of the Employment Agency Monopoly* (Stockholm, TCO, 1992; mimeographed doc., limited circulation).

CHAPTER VI

A MODEL OF SHARED LABOUR MARKET MANAGEMENT

The aim of this final chapter is to propose an innovative model for the functioning of the labour market. Shared management is a system by which the management of a market is organized under the influence of two institutions: public service institutions and, in particular, the public employment service; and private employment agencies, especially for-profit firms.

The construction of this model presupposes that the question of banning private agencies has already been settled, and will approach the matter from the point of view of an acceptable alternative to the monopoly principle. It is an operational model with the emphasis on specific operational methods. It is also a viable model to the extent that the proposed measures are already being applied somewhere in the world, or are being planned or seriously discussed, or are known and accepted in other sectors of activity, and ready to be transferred to the labour market.

This chapter is made up of five sections. The first lays out the policy, objectives and content of a shared labour market. The second describes the role of the State in this market, especially with regard to control and supervision. The third indicates the way in which the public and private sectors can operate in the same markets in competition with each other. The fourth shows the ways in which organizations in the public and private sectors might complement or even cooperate with each other. The last section looks into the future at the prospects for the ILO in its standard-setting activities.

POLICIES, OBJECTIVES AND CONTENT OF A SHARED MANAGEMENT MODEL

The general aim of shared labour market management is to enable the main agents – employers and workers – and society as a whole to function more efficiently than if the market were driven solely by the public service or private agencies. In other words, shared management is the approach that endeavours to bring together public action and private action not to neutralize each other or to grow at each other's expense, but rather to develop synergy and pool together the positive effects of their respective activities so as to meet the interests of each player on the labour market.

The shared management model has not been borrowed wholesale from a specific situation encountered in a given country that is held up as an example. Rather, it is put forward as a structure that is both realistic and idealistic: realistic because its components are drawn from very concrete experiences and considerations; idealistic because the whole model, if it were implemented, would both enhance and enrich existing situations.

The shared management model diverges somewhat from the scenarios most commonly encountered in everyday life. It is not a model of passive coexistence in which the public service and private firms are indifferent to, or even unaware of each other, with each pursuing its own policy and its own interests. Nor is it an authoritarian model in which the public service perceives its role as that of an attentive observer watching every move of private firms, ready to come down with sanctions at the first sign of any indiscretion. Nor is it the model of "subsidiarity", in which the public sector hands over to the private firms all the commercially exploitable market and itself handles only that part of the market of no interest to the private sector, i.e. the management of unemployment insurance, and counselling and training programmes for disadvantaged workers or those without training.

The shared management model might be defined as a model of active coexistence in which the public and private sectors both act in an awareness of their own role and that of the other. It is a model which brings together three apparently incompatible concepts: the concept of regulation and supervision, which confirms the State's sovereign authority; the concept of competition since both sectors have to fight for the same market share; and the concept of complementarity since both sectors will, in very many cases and in many areas, take up where the other sector leaves off.

At the outset, there has to be agreement on which functions the State must judge to be inalienable and non-transferable. These are four in number.

The State will obviously lay down the general rules of the game, arbitrate and judge in the event of disagreement, and impose sanctions in the event of violation.

As the guardian of the common good, the State will maintain its control over the functioning of the labour market. Having defined its policy objectives, it will monitor their implementation, respond to supply and demand to correct inadequacies and imbalances; it will offer a job, paid training or a replacement income to workers who have lost their employment; it will protect the most vulnerable groups from abuse, prevent discrimination, and ensure that the rules of fairness are observed. It will supervise the activities of the various actors in the market and see that they change their behaviour when individual interests conflict with the common good.

The State will maintain control over information about the labour market. It will define the purposes and content of this information and the way it is to be processed. It can compel institutions, enterprises, firms or persons possessing information considered important to make it accessible. Once information has been collected and processed, it must not be held purely to serve the State's own purposes. Rather, the State must in turn make it available to all the players in this market.

The State will maintain control over public funds committed to financing the implementation of its labour market policy. It will also ensure that these funds are used for the purposes laid down in the legislation and regulations, undertake or monitor the management of these funds, and take responsibility for accounting for the results. If unemployment insurance contributions are levied on wages, the management of these funds may be undertaken by the State or entrusted to the employers' or workers' organizations. Where these funds are

administered jointly, the State may intervene to ensure that the applicable regulations are observed and that unemployment insurance expenditure is reconciled with other public employment-related expenditure.

Having defined its own sphere of competence, the State must respect that left to the other players. The space set aside for private firms must be theirs for the long term and must be protected from untimely intervention. The shared management model presupposes a contractual form of agreement between the public and private sectors. The contract will be of fixed duration, but it must not be possible to change its terms unilaterally and arbitrarily. For the model to succeed, suspicion must be allayed and a climate of trust created between the public and private sectors.

Regulation and control of private agencies

The first and most traditional relationship between the public service and private agencies is one of authority, in which the State acts as guardian of the law. However, the State may choose to exercise its authority in a more flexible, more varied and certainly more effective fashion than the traditional pattern of legislation-inspection-sanction.

By breaking the act of supervision down into its three components – subject, object, manner – it will be easier to appreciate its scope. In other words, it will be illustrated by replying to three basic questions. Who exactly carries out the supervision? What exactly is supervised? How is the supervision carried out?

As to who carries out the supervision, it is now accepted that this role should not be entrusted to the public employment service but rather to its supervisory authority, i.e. usually the Minister of Labour acting on behalf of the Government. As will be explained below, the public employment service is required to interact with private agencies in a spirit of both competition and understanding. If the public service is to avoid being justifiably criticized for being both judge and party, it will have to be relieved of this supervisory function, which it scarcely appreciates, especially if it aims to build up a reputation as a technical body.

As to what is to be supervised, the growth of the market, its fluidity and the rapid changes it is undergoing will result in the regulations moving away from the institutional approach. If all private employment firms can set up freely on the market, the regulations will not need to determine the identity of each one so as to distinguish between those that are authorized and those that are not. Instead of regulating the types of agency in addition to their activities, it will be much more useful to regulate their activities and operations, irrespective of the type of agency. In this way, regulations on operations – recruitment, selection, consultancy, contract labour, performance of services, staff leasing, temporary assignment and secondment – should gradually replace regulations on agencies – employment agencies, TWAs, outplacement agencies, executive search companies.

The advantage of regulating operations rather than types of agency lies in its flexibility (which reflects that of the market itself), in the diversity of the

consultations that would precede its adoption (which would thus not be confined to the representatives of specific business interests) and in the relative ease with which it could be updated.

The regulations could well be aimed at the employment management tools and methods used by the various private agencies. For example, provisions could cover the collection and use of personal data, the constitution and purpose of computerized records, the use of certain selection tests, the use of the media for disseminating job vacancies, and enquiries made into the candidate's private life before a recruitment decision is made.

Regulations could also define and give official recognition to the professions of employment manager or consultant, and protect access to them. It could lay down minimum standards of training, competence and conduct to be met by practising or aspiring professionals, both in the public sector and in private firms. Protection of the profession could be achieved by instituting a professional certification system or by registration in a professional body, as is the practice for physicians and lawyers, or by making these consultants sworn professionals, as is customary for court experts, public notaries or translators.

As far as supervisory procedures are concerned, there is certainly room for innovation. Achieving supervision by ensuring compliance with legislation is the oldest and most common approach, and should be neither underestimated nor overlooked; however, it should not be the sole approach.

Supervision may be carried out indirectly, in particular by the State providing encouragement and awarding a "stamp of approval" for self-regulation efforts. In itself, self-regulation is a very useful supplement to regulation by the public authorities covering, as we have just seen, the operations, tools and professions. Self-regulation by federations that group together agencies with similar operations would involve provisions regulating the firms themselves and their operating methods. If the State were to provide its stamp of approval for the various codes of good conduct, the contents of these codes would obviously have to be approved by the public authorities or, better still, be negotiated with them. Public backing of self-regulation might be secured in two ways. The State could require observance of the codes as a prerequisite for practising as an employment manager; or it could set up joint committees with representatives of the profession taking responsibility for guaranteeing application of the code and, in particular, handling complaints and imposing the penalties laid down by the codes for infringement of their provisions.

The State could also influence the practices and conduct of private agencies, not by conventional supervision and control measures but by the strength of its example. If the public employment service decides to enter the executive search market, it can adopt a set of selection methods that it considers both equitable and effective. If these methods obtain a favourable reaction on the part of employers, they will naturally gain recognition in the market without the State having to use legislation to identify or ban methods it considers dubious. Still using the example of executive search, rather than resorting to the ponderous and bureaucratic legislative process, the State could, at most, introduce or have professional associations introduce and ensure the application of an approval system for selection techniques so that clients spontaneously abandon firms using methods which are not approved and which are consequently not in line

with the quality and reliability criteria laid down by professionals from the public or private sector.

Lastly, the State may exert its influence by concertation and negotiation with professionals in the private sector. Concertation of this type might take place within an existing structure (as will be discussed later in this chapter) and at any time during meetings on technical aspects of practices in the various professions. Such meetings might result in agreements on definitions, methods, the interpretation of existing provisions or the content of new provisions for codes or regulations.

In general, the State will have to realize that laws and regulations, important though they may be, are not the only way of influencing the action of private firms. Depending on the case, it might employ methods which are more flexible (being quicker to adopt and easier to update), more acceptable (being based on dialogue and negotiation) and consequently more effective; these methods are self-regulation, negotiation, agreements and setting the example.[1]

There is one aspect of regulation to which the State will have to devote most careful consideration: deciding whether private agencies will have to obtain approval (or a licence, to use the terms of the ILO Convention) from the public authorities before practising their profession. Institution of an approval system offers unquestionable advantages: it allows the State to identify firms operating in the market; it makes it easy to collect information when granting of approval is linked to the obligation of regularly supplying data on the way private firms are carrying out their activities; it ensures close monitoring of the application of regulations; and it allows prior screening of firms wishing to operate in the profession, thus making it easier to avoid problems by barring entry to those that seem the most dubious. However, such a measure entails serious drawbacks: it is considered costly and constraining and incites firms to sidestep it by claiming that the regulations are not applicable to them; it generates suspicion between private firms and public authorities, and compels the State to take an authoritarian role, undermining its credibility when it wishes to assume others; and it discourages firms from long-term strategies and investment, especially when approval has to be renewed each year.

Obviously, an immature market under constant assault from profiteers and speculators needs regulation more than others. It must therefore continue to enforce provisions on the granting of approval. On the other hand, a market showing signs of maturity, and which demonstrates its capacity for self-regulation, might consider such a measure unnecessarily restrictive. When instituted, such a measure should not be presented as unchangeable and final but rather as one which may be loosened depending on the way the markets develop and conduct themselves. Approval might thus gradually lose its more restrictive aspects and be reduced to a mere obligation for private firms to register with the public authorities. This registration would have two effects: it would make it possible to identify firms; and it would imply an undertaking on their part to abide by the current regulations.

A final aspect of regulation to be considered is the identification of private employment agencies for tax purposes and the destination of the taxes levied on them. Although it can be accepted that individual firms derive financial profit from their employment activities, it is far less admissible that the State should

earmark the tax levied on the activities of these firms for any purpose other than employment. This is why these agencies should be identified for tax purposes so that the fiscal revenues from them go to fund training programmes for less privileged jobseekers or for employment promotion programmes. The more it is seen that the profits from the management of employment contribute to financing public activities in favour of employment, the more readily society will accept the concept of profiting from employment management.

Competition

Throughout the 1980s, a sweeping change in ideas brought about a redefinition of the role of the State in relation to the private sector. The objectives were to reduce the scope of public-sector action, restore as many activities to the private sector as it showed itself ready to take on, reduce state expenditure, and increase the effectiveness of both public action and private initiative.

Although this way of thinking was hotly debated, especially as applied to social affairs, it has now reached the labour market. Thus, many politicians and decision-makers have not found fault with the argument that there could be a clear division of roles: assistance to jobseekers with difficulties entering employment should fall to the public service, while all the profitable market of job vacancies and employable workers should fall to private firms.

Clearly, dividing up roles according to this criterion would be prejudicial to the whole of the labour market. As long as employers are the decision-makers (as they should be) in employee recruitment, the public employment service has no chance of making employers aware of their social role and persuading them to allow less privileged jobseekers access to productive employment unless it also offers employers a guarantee of professional skills and efficiency when it is called upon to solve problems of staff search, selection and renewal. In other words, the public service will be better able to play its social role, if it can – in the same way as any private firm – act as a professional partner vis-à-vis employers.

It is therefore essential that, in the very specific labour market field, the public authorities should recognize the public service as a direct competitor to private employment agencies. A market which establishes competition between the public service and the private firms is not necessarily a defective market. On the contrary, it may function more dynamically given greater critical capacity, the ability to respond more swiftly, and a more marked tendency to reform — all recognized as tangible effects of competition.

It would even be a good thing if competition went further than is usually the case. There are whole segments of the market occupied by private firms without any competition from the public sector: the market for high skills, temporary work (at least in the form of recruitment for assignment) and, to a smaller degree, outplacement. The reasons for this are well known: these are markets requiring very special competence and relatively abundant financial resources that the public services, under the pressure of unemployment and increasing budgetary constraints, are unable to mobilize.

To gain access to these markets, the public services will need to explore the self-financing approach. To finance particularly expensive operations, in the case of the high-skill market in particular, the public services would have to make an exception to the principle of free-of-charge service. They would need to build up their own in-house specialized units, which would be financially autonomous and managed as though they were private agencies. To ensure that competition was considered fair, these units should not receive any public subsidy, either in cash or in kind (such as premises, computer equipment or services), and should derive all their resources from the sale of their services. These special units of the public service would have to accept all the advantages and consequences of operating on a purely competitive basis, including paying the penalty of bankruptcy.

The public service could derive significant advantages from the few niches in which it would operate commercially (while retaining its non-profit status): it would gain in esteem and credibility in the eyes of its employer clients, for whom it would increasingly shed its usual image as a sluggish, ponderous institution, unable to respond to market demands and staffed with officials concerned only with procedures; it would extend its knowledge of the market to unexplored areas, the better to understand its motives and behaviours; and by setting up an advance guard on the management and profitability side, and a sort of elite unit on the personnel side, it would set in motion an internal competition mechanism that could prove beneficial to the functioning of the public service as a whole.

Competition with private agencies might also come from sectors other than the public sector as such, for example autonomous bodies such as those with the status of a non-profit foundation run jointly by employers and workers or on a tripartite basis. This latter approach would offer the double advantage of involving the public service in private management in direct association with employers and workers and, at the same time, thanks to its special status, detaching it from the civil service as such and therefore anchoring it more firmly in the sphere and logic of a commercial enterprise [2].

Competition might also come from the trade unions. There is nothing in the current legislation to prevent these organizations from diversifying their role. To their roles of putting forward workers' demands and influencing the content of legislation, they could add direct intervention in the labour market. By setting up commercially viable firms, they could act by example, and show how to reconcile the enterprise's need for profitability with the principles of fair treatment for the workers. In this way, instead of using prohibition as they have in the past, the unions could use the rules of competition to drive the for-profit firms they most criticize out of the market.[3]

Complementarity and cooperation

Complementarity is a relatively new concept in administrative science. It presupposes that the State has completed its own cultural revolution, and that it sees its traditional duty to provide a public service as being accompanied by the duty to supply this service in accordance with measurable quality, output and efficiency criteria. In the name of efficiency, and without cutting back on the

content of the public service, an increasing number of States have embarked on what is now known as "indirect public administration".[4]

According to this concept, the State no longer systematically mobilizes its civil service resources to supply all its services but, whenever justifiable on grounds of efficiency, calls on private operators acting for its account and on its behalf to supply certain of the State's services in exchange for a comprehensive fee. This shift in behaviour parallels behaviour shifts in management approaches of enterprises, increasing numbers of which are now outsourcing their peripheral functions as seen in Chapter III.[5]

In the labour market, complementarity thus means essentially that the tasks otherwise performed directly by the public employment service are entrusted to private firms under the responsibility and supervision of this service.

Complementarity is an infinitely elastic concept. It may be very narrow, for example where the private sector acts as an executive agent performing a public mission in one-off programmes. It may be more extensive, for example where the public service pares itself down to core activities such as programme design and the formulation, monitoring and evaluation of operational contracts, the implementation of which is entrusted to a number of private operators.

If the trend seen in recent years continues, it can safely be predicted that the public service will make increasing use of complementarity. Experience has in fact shown that the positive aspects of complementarity outweigh the negative ones. In addition to obvious budgetary gains, there are several other advantages for the public service: public service and private firms can find a common ground in their approaches; instead of swelling the ranks of life-appointed civil servants, public expenditure contributes to the development of a complementary market which creates productive jobs and can even change in size in response to the economic situation; improvements in programme quality and efficiency are easier to achieve as a result of the competition that naturally develops between private operators vying for state contracts.

From the legal point of view, complementarity between the public service and private firms is established through conventional delegation (or franchise) or sub-contracting contracts signed following offers for tender. It can also take the form of subsidies to firms or associations carrying out missions declared to be for the public good. Or it may take a more unconventional form where the public service, instead of providing a service (for example, a series of vocational counselling interviews), issues a voucher entitling the beneficiary to obtain this service from specialized private firms registered with and approved by the public service.[6]

The search for complementarity has now become second nature for some public services, which will not launch a programme without first market-testing it, i.e. finding out, in exact figures, whether the service could not be provided with equally good results at a lower cost by contracting it out to private operators.

There are very many activities that the State can contract out to private firms. For example, vocational retraining programmes for an economic sector or geographical area hit by unemployment may be entrusted wholly or in part to outplacement agencies; specialized firms may also take over the running of courses on job-search techniques for long-term unemployed persons referred by

the employment service; contracting-out may be very extensive when all the State's job training programmes (such as skill upgrading and retraining courses and job traineeships) or vocational counselling and guidance services are entrusted to private operators.[7]

There is no shortage of proponents of an even wider use of indirect management of employment. Even placement, which was and still is the main focus of all public service functions, could be entrusted to private operators in certain specific cases. When, as may happen, it costs less for a private-law association or a commercial enterprise to place a long-term unemployed worker than it would cost the public service, the latter may find it worthwhile to pay the association or the firm a subsidy for each successful placement rather than attempt to provide the service directly from its own resources.

In addition to complementarity, other forms of cooperation may be set up between the public service and private firms. In the same way as competition between private firms can go hand in hand with cooperation between these firms within professional associations, the public service can offer private agencies various methods and structures for cooperation.[8]

The public service, private agencies and union representatives could sit together on a national human resources council set up as a forum for concertation, exchange of views and constructive confrontation. Agreements reached in this council could be made binding on both the public and private sectors in their practices and offer a substitute for legislation. Such a council could also develop into a think tank on subjects of mutual interest, and sponsor surveys, symposia, congresses and systems for collecting and disseminating the results of experience from other countries.

The public service and private firms could also agree to establish a common nomenclature of employment professionals, and lay down for each type the training, experience and standards of conduct required of practitioners. They could jointly found and run a professional association to confer status, protection and credibility on the profession. The establishment of such an association would in the long term prove the best guarantee of professionalism and good conduct, both for the public authorities and the firms' clients. A guarantee of this kind would certainly be seen as infinitely more effective than conventional supervision in the form of systems of approval or compulsory registration of fee scales.

Such an agreement could also apply to the establishment of standards of practice for the profession. For example, professionals could endorse or approve various selection tests, without imposing any constraint; this would have the effect of discrediting those practices they do not recognize.

Lastly, cooperation could be extended to the settlement of disputes. Instead of complaints, conflicts, and recriminations ending up in court or stirring up irreconcilable animosity, cases could first be referred to a body (which could be set up by the above-mentioned council) comprised of professionals from the public and private employment sector. Such a conciliation body would serve not only to prevent the unnecessary aggravation of conflicts, but also to identify the most common grounds for dispute, and afford the means to put forward more durable solutions through regulations or agreements between the parties.

STANDARD-SETTING PROSPECTS FOR THE ILO

The final section of Chapter IV gave the reasons why the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), should be revised. The Employment Service Convention (No. 88) and Recommendation (No. 83), adopted a year earlier in 1948, would also no doubt benefit from revision.

The fact is that the employment service instruments have stood the test of time better than the Convention adopted a year later. They contained important principles which still seem to be valid today, in particular those concerning tripartite participation, training and independence of officials, development of a network with wide geographical coverage and voluntary use by employers and workers of the services offered.

However, read in the light of current circumstances, the instruments adopted in 1948 display a number of striking inadequacies. The stipulation that the public service be free should not be so mandatory and absolute, because it is now accepted in practice that a certain number of services, admittedly marginal but nonetheless significant, are supplied against payment. Moreover, although the instruments deal at length with aspects of the internal organization of the public service, they scarcely touch upon the service's missions. They make no mention of active labour market policy, a concept recognized and applied in practice in a very large number of countries for over 20 years, nor of the role of the public service in drawing up and administering employment promotion, employment subsidy and job creation programmes.

The most conspicuous deficiency in the employment service instruments is the absence of any reference to the institutional context in which the service is expected to develop. The implementation of an active labour market policy involves the efforts of a number of institutions (unemployment insurance funds, training centres, statistics institutes) and can hope to succeed only if their actions are concerted. Facilitating and coordinating are key functions of the employment service in a complex and multi-faceted institutional environment. The provisions of Article 1(2) of Convention No. 88 concerning cooperation desirable between the employment service and other public and private bodies, and those of Paragraph 20 of Recommendation No. 83 regarding the need to consult the employment service concerning such questions as the distribution of industry, public works, technological progress, migration, housing, social amenities, etc. do not give sufficient emphasis to the close complementarity that should link all the bodies involved in the implementation of the labour market policy.

Another shortcoming concerns the relationship between the public service and private agencies. The nature of this relationship can be seen by reading the instruments on the employment service and on fee-charging employment agencies together. This does not cause any concept of shared management of the market, complementarity or still less, cooperation to emerge. It is clear that the drafter's sole concern is for the public service, for the recognition of its authority and its proper financing. In contrast, the attitude to fee-charging employment agencies is one of half-hearted tolerance or mistrust since their fate is, at best, to be strictly monitored or, at worst, to be banned on account of their harmful activities. Paragraph 26 of Recommendation No. 83 confirms this mistrust

when it states that "Systematic efforts should be made to develop the efficiency of the employment service in such a manner as to obviate the need for private employment agencies in all occupations . . ."

If the principles of active coexistence between public service and private agencies, as illustrated in this chapter, are to prevail in the future, they must be confirmed in a standard with an entirely new approach.[9]

A new standard should abandon the public/private dichotomy and concentrate on the activities of the institutions now present on the labour market. In practice, this would mean revising Convention No. 88, Recommendation No. 83 and Convention No. 96 together, and adopting a single new standard focusing on the missions and operation of all the bodies involved in the functioning of these markets.

A combined standard would be better suited to eliminating the drawbacks in the current instruments: it would convey no explicit or implicit value judgement distinguishing the good organizations on the one hand (public services) and the bad ones on the other (private employment agencies, viewed with suspicion), but would see them instead as institutions which have a useful and worthy role to play.

A combined standard would supplement the current standards concerning employment policy. In laying down the rights and duties of each institution, it could highlight the links and complementarity between these bodies. Thus, a standard which would succeed in conveying the relationship established between the State and private agencies would consolidate in people's minds the concept of shared management of the labour market, and would put an end to the monopoly controversy.

A new standard would renew an ILO tradition of laying down core provisions and supplementing them with more specific provisions in one or more appendices that may be ratified separately. This approach, which is intended to encourage States to ratify (or apply) their instruments in stages in line with progress made in the application of the different provisions, was adopted, for example, in the case of the Migration for Employment Convention (Revised), 1949 (No. 97).

A new standard might also be an opportunity to rethink the role of the social partners. In the context of the labour market, they might then see themselves no longer just as the traditional negotiating-table opponents defending their interests in the laws and regulations or in the public employment service's programmes, but also as prime movers in the establishment of bodies intervening directly in the functioning of these markets. As fully-fledged decision-makers, they might thus be better able to implement the values they defend.

Lastly, a new standard might usefully be supplemented by a document, without legal force but eminently functional in nature, which could serve as a guideline in the application of specific operational measures, much as codes of practice do.

Notes

[1] When France adopted a law on recruitment and individual freedoms, certain authors raised the question of the disadvantages of systematically resorting to legislation as a means of correcting practices considered abusive. See Ray, J.-E.: "Une loi macédonienne? Etude critique du titre V de la loi du 31 décembre 1992", *Droit Social* (Paris, Editions techniques et économiques), No. 2, Feb. 1992, pp. 103-114.

[2] A very good example, in the Netherlands, of a non-profit tripartite institution competing with temporary work agencies, is a body with foundation status. See Start Employment Agency: *How an ordinary employment agency can be very special* (Gouda, Start Employment Agency, 1993). See also: *Jaarverslag 1992* (Gouda, Start, 1993). Launched in the Netherlands in 1977, the Start model has spread to other countries and has recently been introduced on an experimental basis in Germany. On the German experience, see Hirsch, N.: "Arbeitnehmerüberlassung am Beispiel von START", in *Soziale Sicherheit* (Dusseldorf), No. 3, 1993, pp. 81-85.

[3] For a perspective on the possible labour market role of the trade unions, see Bognanno, M. F. and Kleiner, M. M. (ed.): *Labor market institutions and the future role of unions* (Oxford and Cambridge, Massachusetts, Basil Blackwell, 1992).

[4] Among the recent examples of reflection on new civil service management methods, see Crozier, M.: "Les changements dans les organisations", in *Revue française d'administration publique* (Paris, Institut international d'administration publique), No. 59, July-Sep. 1991, pp. 349-354, and Carter, N.: "Learning to measure performance: The use of indicators in organizations", in *Public Administration* (Oxford, Royal Institute of Public Administration), No. 1, Spring 1991, pp. 85-101.

[5] The idea and practice of complementarity between public and private activity dates back to the late 1970s. They first emerged in the United Kingdom before spreading to other countries. The most significant publications on the subject include HM Treasury: *Using private enterprise in government. Report of a multi-departmental review on competitive tendering and contracting of services in government departments* (London, HMSO, 1986) and most recently, Lamont, N.: *Competing for quality* (London, HMSO, 1991). See also the result of a pragmatic analysis carried out in the United States: Chi, K. S. and Devlin, K. M.: "Use of the private sector in employment and job training" in Allen, J. W. et al.: *The private sector in state service delivery: Examples of innovative practices* (Washington, DC, The Urban Institute Press, 1989). This trend towards complementarity is not, of course, unanimously supported, especially among workers' organizations that see it as an attempt to privatize the civil service. See "Market testing: Privatising the government", *Labour Research* (London), Feb. 1993, pp. 17-18. An interesting recent study has attempted an initial evaluation of British experience: Keraudren, P.: "La réforme 'managérialiste' du Civil Service britannique depuis 1979", in *Revue française d'administration publique* (Paris, Institut international d'administration publique), No. 65, Jan.-Mar. 1993, pp. 129-138.

[6] The first public service offered in the form of a credit giving the beneficiary a sort of take-up entitlement from approved institutions was applied in the field of training. For more details on the operational procedures, see Ople, A.: "Moving into credit", in *Employment Gazette* (London), Jan. 1992, p. 5.

[7] In the United Kingdom, the Restart training programme for the long-term unemployed is entirely contracted out by the National Employment Service to private operators; a recent evaluation by independent researchers emphasized numerous positive aspects. For more details on the subject, see White, M. and Lakey, J.: *The Restart effect: Does active labour market policy reduce unemployment?* (London, Policy Studies Institute, 1992). In Sweden the implementation of the whole employment training programme has been entrusted by the public employment service to external operators by means of a system of calls for tender. See Ossvik, K.: *Employment training in Sweden* (Stockholm, Arbetsmarknadsstyrelsen, 1992).

[8] Recent research has attempted to show the increasing affinities between public and private sectors in the way in which they look at human resources management. For an illustration of this current of thought, see Maisonrouge, J.: "Les ressources humaines vers

une culture commune", in *Revue française d'administration publique* (Paris, Institut international d'administration publique), No. 59, July-Sep. 1991, pp. 407-412.

[9] The ILO Director-General has made a statement on the up-to-date nature of Convention No. 88 and the utility of revising it. See Blanchard, F.: "Inaugural speech at the International Symposium on the Role and Organization of Employment Services", *Record of Proceedings of the International Symposium on the Role and Organization of Employment Services, Nuremberg, 14-17 Oct. 1986* (ILO and Federal Institute for Employment, 1987), pp. 11-13.

SUGGESTED POINTS FOR DISCUSSION

1. Is the distinction drawn between the different types of agencies in Chapter II according to type of activity satisfactory for the purposes of discussion? Does the typology put forward appear to be exhaustive, and does it make differences and overlapping areas sufficiently clear?

2. How have States approached the growth and the number and volume of activity of private employment agencies? Have States appeared to be powerless in the face of an unavoidable phenomenon, or have they endeavoured to measure it and gain control of it? In retrospect, could they have behaved differently? In what way could a different approach have changed the situation as it stands today or made it easier to gain control of the phenomenon?

3. Do the reasons put forward in Chapter III to explain the growth of private employment agencies appear to be relevant? Can other causes of this growth be found? What are they, and what is their relative importance? Among known causes, are there some which appear to predominate? If so, what are they?

4. Does the criticism levelled at Convention No. 96 in Chapter IV appear to be justified? Do the recent denunciations of this Convention reflect a situation which is confined to the five countries in question, or do they reflect a more widespread criticism of the content of this standard?

5. In the light of the facts outlined in Chapters IV and V, and in particular of the inexorable growth of private agencies, can a monopoly situation still be viewed as an inalienable principle? What are the chances of meeting the goal stated in Part II of Convention No. 96, i.e. the progressive abolition of fee-charging employment agencies as public employment services become stronger? If the monopoly situation were to be discarded, what conditions should be met in order for this to be acceptable?

6. Should the various private agencies be subject to special regulation? Can they be governed by regulations applicable to all of them, or simply be subject to ordinary law? If special regulation proves to be necessary, what should be its principal objective? In what cases and for what types of agencies is it preferable not to enact any provisions?

7. Does the model for shared management of the labour market put forward in Chapter VI appear to be convincing, consistent or feasible? Does it appear to need to be applied in full or can it be applied in part? What foreseeable obstacles are there to its implementation?

8. Does the competition between the public employment service and private agencies work to the good of the labour market as a whole? In what ways does it serve the interests of jobseekers? Is the spirit of competition compatible with the mission of the public service? From the viewpoint of public employment

services, is there any reason why there should not be a spirit of competition between them and private agencies? From the viewpoint of private agencies, can competition from the public service be seen as beneficial?

9. Should cooperation be sought between the public service and private agencies? What would be the objective of such cooperation? Would feasible forms of cooperation be the setting up of a human resources council, protection of the exercise of the profession of employment consultant, a system whereby the tools and methods used in the profession would be subject to approval, and the setting up of joint conciliation and dispute settlement boards?

10. How should the ILO follow up on the general discussion regarding private employment agencies, in particular with a view to setting standards? Should it propose to coming sessions of the Governing Body that Conventions Nos. 96 and 88 and Recommendation No. 83 be revised? Should it propose that all these standards be revised together with a view to adopting a new single standard, or should it propose successive revisions first of Convention No. 96, followed by Convention No. 88 and Recommendation No. 83, or should it propose that the standards in force be retained?

Appendix I

Convention No. 88

Convention concerning the Organization of the Employment Service [1]

The General Conference of the International Labour Organization,

Having been convened at San Francisco by the Governing Body of the International Labour Office, and having met in its Thirty-first Session on 17 June 1948, and

Having decided upon the adoption of certain proposals concerning the organization of the employment service, which is included in the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this ninth day of July of the year one thousand nine hundred and forty-eight, the following Convention, which may be cited as the Employment Service Convention, 1948:

Article 1

1. Each Member of the International Labour Organization for which this Convention is in force shall maintain or ensure the maintenance of a free public employment service.

2. The essential duty of the employment service shall be to ensure, in cooperation where necessary with other public and private bodies concerned, the best possible organization of the employment market as an integral part of the national programme for the achievement and maintenance of full employment and the development and use of productive resources.

Article 2

The employment service shall consist of a national system of employment offices under the direction of a national authority.

Article 3

1. The system shall comprise a network of local and, where appropriate, regional offices, sufficient in number to serve each geographical area of the country and conveniently located for employers and workers.

2. The organization of the network shall –

(a) be reviewed –

(i) whenever significant changes occur in the distribution of economic activity and of the working population, and

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[1] Date of coming into force: 10 August 1950.

(ii) whenever the competent authority considers a review desirable to assess the experience gained during a period of experimental operation; and

(b) be revised whenever such review shows revision to be necessary.

Article 4

1. Suitable arrangements shall be made through advisory committees for the cooperation of representatives of employers and workers in the organization and operation of the employment service and in the development of employment service policy.

2. These arrangements shall provide for one or more national advisory committees and where necessary for regional and local committees.

3. The representatives of employers and workers on these committees shall be appointed in equal numbers after consultation with representative organizations of employers and workers, where such organizations exist.

Article 5

The general policy of the employment service in regard to referral of workers to available employment shall be developed after consultation of representatives of employers and workers through the advisory committees provided for in Article 4.

Article 6

The employment service shall be so organized as to ensure effective recruitment and placement, and for this purpose shall –

(a) assist workers to find suitable employment and assist employers to find suitable workers, and more particularly shall, in accordance with rules framed on a national basis –

(i) register applicants for employment, take note of their occupational qualifications, experience and desires, interview them for employment, evaluate if necessary their physical and vocational capacity, and assist them where appropriate to obtain vocational guidance or vocational training or retraining,

(ii) obtain from employers precise information on vacancies notified by them to the service and the requirements to be met by the workers whom they are seeking,

(iii) refer to available employment applicants with suitable skills and physical capacity,

(iv) refer applicants and vacancies from one employment office to another, in cases in which the applicants cannot be suitably placed or the vacancies suitably filled by the original office or in which other circumstances warrant such action;

(b) take appropriate measures to –

(i) facilitate occupational mobility with a view to adjusting the supply of labour to employment opportunities in the various occupations,

(ii) facilitate geographical mobility with a view to assisting the movement of workers to areas with suitable employment opportunities,

(iii) facilitate temporary transfers of workers from one area to another as a means of meeting temporary local maladjustments in the supply of or the demand for workers,

(iv) facilitate any movement of workers from one country to another which may have been approved by the governments concerned;

(c) collect and analyse, in cooperation where appropriate with other authorities and with management and trade unions, the fullest available information on the situation of the employment market and its probable evolution, both in the country as a whole and in the different industries, occupations and areas, and make such information available systematically and promptly to the public authorities, the employers' and workers' organizations concerned, and the general public;

(d) cooperate in the administration of unemployment insurance and assistance and of other measures for the relief of the unemployed; and

(e) assist, as necessary, other public and private bodies in social and economic planning calculated to ensure a favourable employment situation.

Article 7

Measures shall be taken –

(a) to facilitate within the various employment offices specialization by occupations and by industries, such as agriculture and any other branch of activity in which such specialization may be useful; and

(b) to meet adequately the needs of particular categories of applicants for employment, such as disabled persons.

Article 8

Special arrangements for juveniles shall be initiated and developed within the framework of the employment and vocational guidance services.

Article 9

1. The staff of the employment service shall be composed of public officials whose status and conditions of service are such that they are independent of changes of government and of improper external influences and, subject to the needs of the service, are assured of stability of employment.

2. Subject to any conditions for recruitment to the public service which may be prescribed by national laws or regulations, the staff of the employment service shall be recruited with sole regard to their qualifications for the performance of their duties.

3. The means of ascertaining such qualifications shall be determined by the competent authority.

4. The staff of the employment service shall be adequately trained for the performance of their duties.

Article 10

The employment service and other public authorities where appropriate shall, in cooperation with employers' and workers' organizations and other interested bodies, take all possible measures to encourage full use of employment service facilities by employers and workers on a voluntary basis.

Article 11

The competent authorities shall take the necessary measures to secure effective cooperation between the public employment service and private employment agencies not conducted with a view to profit.

Article 12

1. In the case of a Member the territory of which includes large areas where, by reason of the sparseness of the population or the stage of development of the area, the competent authority considers it impracticable to enforce the provisions of this Convention, the authority may exempt such areas from the application of this Convention either generally or with such exceptions in respect of particular undertakings or occupations as it thinks fit.

2. Each Member shall indicate in its first annual report upon the application of this Convention submitted under article 22 of the Constitution of the International Labour Organization any areas in respect of which it proposes to have recourse to the provisions of the present Article and shall give the reasons for which it proposes to have recourse thereto; no Member shall, after the date of its first annual report, have recourse to the provisions of the present Article except in respect of areas so indicated.

3. Each Member having recourse to the provisions of the present Article shall indicate in subsequent annual reports any areas in respect of which it renounces the right to have recourse to the provisions of the present Article.

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Articles 13 and 14: Declarations of application to non-metropolitan territories.
Articles 15-22: Standard final provisions.

Appendix II

Recommendation No. 83

Recommendation concerning the Organization of the Employment Service

The General Conference of the International Labour Organization,

Having been convened at San Francisco by the Governing Body of the International Labour Office, and having met in its Thirty-first Session on 17 June 1948, and

Having decided upon the adoption of certain proposals with regard to the organization of the employment service, which is included in the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Employment Service Recommendation, 1944, and the Employment Service Convention, 1948,

adopts this ninth day of July of the year one thousand nine hundred and forty-eight, the following Recommendation, which may be cited as the Employment Service Recommendation, 1948:

Whereas the Employment Service Recommendation, 1944, and the Employment Service Convention, 1948, provide for the organization of employment services and it is desirable to supplement the provisions thereof by further recommendations;

The Conference recommends that each Member should apply the following provisions as rapidly as national conditions allow and report to the International Labour Office as requested by the Governing Body concerning the measures taken to give effect thereto.

I. General organization

1. The free public employment service should comprise a central headquarters, local offices and, where necessary, regional offices.

2. In order to promote development of the employment service, and to secure unified and coordinated national administration, provision should be made for –

(a) the issue by the headquarters of national administrative instructions;

(b) the formulation of minimum national standards concerning the staffing and material arrangements of the employment offices;

(c) adequate financing of the service by the government;

(d) periodical reports from lower to higher administrative levels;

(e) national inspection of regional and local offices; and

(f) periodical conferences among central, regional and local officers, including inspection staff.

3. Appropriate arrangements should be made by the employment service for such cooperation as may be necessary with management, workers' representatives, and bodies set up with a view to studying the special employment problems of particular areas, undertakings, industries, or groups of industries.

4. Measures should be taken in appropriate cases to develop, within the general framework of the employment services –

(a) separate employment offices specializing in meeting the needs of employers and workers belonging to particular industries or occupations such as port transport, merchant marine, building and civil engineering, agriculture and forestry and domestic service, wherever the character or importance of the industry or occupation or other special factors justify the maintenance of such separate offices;

(b) special arrangements for the placement of –

(i) juveniles;

(ii) disabled persons; and

(iii) technicians, professional workers, salaried employees and executive staff;

(c) adequate arrangements for the placement of women on the basis of their occupational skill and physical capacity.

II. Employment market information

5. The employment service should collect employment market information, including material pertaining to –

(a) current and prospective labour requirements (including the number and type of workers needed, classified on an industrial, occupational or area basis);

(b) current and prospective labour supply (including details of the number, age and sex, skills, occupations, industries and areas of residence of the workers and of the number, location and characteristics of applicants for employment).

6. The employment service should make continuous or special studies on such questions as –

(a) the causes and incidence of unemployment, including technological unemployment;

(b) the placement of particular groups of applicants for employment such as the disabled or juveniles;

(c) factors affecting the level and character of employment;

(d) the regularization of employment;

(e) vocational guidance in relation to placement;

(f) occupation and job analysis; and

(g) other aspects of the organization of the employment market.

7. This information should be collected by suitably trained and qualified staff, in cooperation where necessary with other official bodies and with employers' and workers' organizations.

8. The methods used for the collection and analysis of the information should include, as may be found practicable and appropriate –

(a) direct enquiries from the bodies with special knowledge of the subjects in question, such as other public bodies, employers' and workers' organizations, public and private undertakings, and joint committees;

(b) cooperation with labour inspection and unemployment insurance and assistance services;

(c) periodical reports on questions having a special bearing on the employment market; and

(d) investigations of particular questions, research projects and analyses carried out by the employment service.

III. Manpower budget

9. In order to facilitate the best possible organization of the employment market as an integral part of the national programme for the achievement and maintenance of full employment and the development and use of productive resources, an annual national manpower budget should be drawn up, as soon as practicable, as part of a general economic survey.

10. The manpower budget should be drawn up by the employment service in cooperation with other public authorities where appropriate.

11. The manpower budget should include detailed material concerning the anticipated volume and distribution of the labour supply and demand.

IV. Referral of workers

12. The employment service should –

(a) observe strict neutrality in the case of employment available in an establishment where there is a labour dispute affecting such employment;

(b) not refer workers to employment in respect of which the wages or conditions of work fall below the standard defined by law or prevailing practice;

(c) not, in referring workers to employment, itself discriminate against applicants on grounds of race, colour, sex or belief.

13. The employment service should be responsible for providing applicants for employment with all relevant information about the jobs to which such applicants are referred, including information on the matters dealt with in the preceding paragraph.

V. Mobility of labour

14. For the purpose of facilitating the mobility of labour necessary to achieve and maintain maximum production and employment, the employment service should take the measures indicated in paragraphs 15 to 20 below.

15. The fullest and most reliable information concerning employment opportunities and working conditions in other occupations and areas and concerning living conditions (including the availability of suitable housing accommodation) in such areas should be collected and disseminated.

16. Workers should be furnished with appropriate information and advice designed to eliminate objections to changing their occupation or residence.

17. (1) The employment service should remove economic obstacles to geographical transfers which it considers necessary by such means as financial assistance.

(2) Such assistance should be granted, in cases authorized by the service, in respect of transfers made through or approved by the service, particularly where no other arrangements exist for the payment other than by the worker of the extra expense involved in the transfers.

(3) The amount of the assistance should be determined according to national and individual circumstances.

18. The employment service should assist the unemployment insurance and assistance authorities in defining and interpreting the conditions in which available employment which is in an occupation other than the usual occupation of an unemployed person or which requires him to change his residence should be regarded as suitable for him.

19. The employment service should assist the competent authorities in establishing and developing the programmes of training or retraining courses (including apprenticeship, supplementary training and upgrading courses), selecting persons for such courses and placing in employment persons who have completed them.

VI. Miscellaneous provisions

20. (1) The employment service should cooperate with other public and private bodies concerned with employment problems.

(2) For this purpose the service should be consulted and its views taken into account by any coordinating machinery concerned with the formation and application of policy relating to such questions as –

(a) the distribution of industry;

(b) public works and public investment;

(c) technological progress in relation to production and employment;

(d) migration;

(e) housing;

(f) the provision of social amenities such as health care, schools and recreational facilities; and

(g) general community organization and planning affecting the availability of employment.

21. In order to promote use of employment service facilities and enable the service to perform its tasks efficiently, the service should take the measures indicated in paragraphs 22 to 25 below.

22. (1) Continuous efforts should be made to encourage full voluntary use of employment service information and facilities by persons seeking employment or workers.

(2) These efforts should include the use of films, radio and all other methods of public information and relations with a view to making better known and appreciated, particularly among employers and workers and their organizations, the basic work of the service in employment organization and the advantages accruing to the workers, employers and the nation from the fullest use of the employment service.

23. Workers applying for unemployment benefit or allowances, and so far as possible persons completing courses of vocational training under public or government-subsidized training programmes, should be required to register for employment with the employment service.

24. Special efforts should be made to encourage juveniles, and so far as possible all persons entering employment for the first time, to register for employment and to attend for an employment interview.

25. Employers, including the management of public or semi-public undertakings, should be encouraged to notify the service of vacancies for employment.

26. Systematic efforts should be made to develop the efficiency of the employment service in such manner as to obviate the need for private employment agencies in all occupations except those in which the competent authority considers that for special reasons the existence of private agencies is desirable or essential.

VII. International cooperation among employment services

27. (1) International cooperation among employment services should include, as may be appropriate and practicable, and with the help where desired of the International Labour Office –

(a) the systematic exchange of information and experience on employment service policy and methods, either on a bilateral, regional or multilateral basis; and

(b) the organization of bilateral, regional or multilateral technical conferences on employment service questions.

(2) To facilitate any movements of workers approved in accordance with Article 6 (b) (iv) of the Convention, the employment service, on the request of the national authority

directing it and in cooperation where desired with the International Labour Office, should –

(a) collect in cooperation, as appropriate, with other bodies and organizations, information relating to the applications for work and the vacancies which cannot be filled nationally, in order to promote the immigration or emigration of workers able to satisfy as far as possible such applications and vacancies;

(b) cooperate with other competent authorities, national or foreign, in preparing and applying inter-governmental bilateral, regional or multilateral agreements relating to migration.

Appendix III

Convention No. 96

Convention concerning Fee-Charging Employment Agencies (Revised 1949) [1]

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals with regard to the revision of the Fee-Charging Employment Agencies Convention, 1933, adopted by the Conference at its Seventeenth Session, which is included in the tenth item on the agenda of the session, and

Having resolved that these proposals shall take the form of an international Convention, complementary to the Employment Service Convention, 1948, which provides that each Member for which the Convention is in force shall maintain or ensure the maintenance of a free public employment service, and

Considering that such a service should be available to all categories of workers,

adopts this first day of July of the year one thousand nine hundred and forty-nine, the following Convention, which may be cited as the Fee-Charging Employment Agencies Convention (Revised), 1949:

PART I. GENERAL PROVISIONS

Article 1

1. For the purpose of this Convention the expression "fee-charging employment agency" means –

(a) employment agencies conducted with a view to profit, that is to say, any person, company, institution, agency or other organization which acts as an intermediary for the purpose of procuring employment for a worker or supplying a worker for an employer with a view to deriving either directly or indirectly any pecuniary or other material advantage from either employer or worker; the expression does not include newspapers or other publications unless they are published wholly or mainly for the purpose of acting as intermediaries between employers and workers;

(b) employment agencies not conducted with a view to profit, that is to say, the placing services of any company, institution, agency or other organization which, though not conducted with a view to deriving any pecuniary or other material advantage, levies from either employer or worker for the above services an entrance fee, a periodical contribution or any other charge.

2. This Convention does not apply to the placing of seamen.

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[1] Date of coming into force: 18 July 1951.

Article 2

1. Each Member ratifying this Convention shall indicate in its instrument of ratification whether it accepts the provisions of Part II of the Convention, providing for the progressive abolition of fee-charging employment agencies conducted with a view to profit and the regulation of other agencies, or the provisions of Part III, providing for the regulation of fee-charging employment agencies including agencies conducted with a view to profit.

2. Any Member accepting the provisions of Part III of the Convention may subsequently notify the Director-General that it accepts the provisions of Part II; as from the date of the registration of such notification by the Director-General, the provisions of Part III of the Convention shall cease to be applicable to the Member in question and the provisions of Part II shall apply to it.

PART II. PROGRESSIVE ABOLITION OF FEE-CHARGING EMPLOYMENT AGENCIES CONDUCTED WITH A VIEW TO PROFIT AND REGULATION OF OTHER AGENCIES

Article 3

1. Fee-charging employment agencies conducted with a view to profit as defined in paragraph 1 (a) of Article 1 shall be abolished within a limited period of time determined by the competent authority.

2. Such agencies shall not be abolished until a public employment service is established.

3. The competent authority may prescribe different periods for the abolition of agencies catering for different classes of persons.

Article 4

1. During the period preceding abolition, fee-charging employment agencies conducted with a view to profit –

(a) shall be subject to the supervision of the competent authority; and

(b) shall only charge fees and expenses on a scale submitted to and approved by the competent authority or fixed by the said authority.

2. Such supervision shall be directed more particularly towards the elimination of all abuses connected with the operations of fee-charging employment agencies conducted with a view to profit.

3. For this purpose, the competent authority shall consult, by appropriate methods, the employers' and workers' organizations concerned.

Article 5

1. Exceptions to the provisions of paragraph 1 of Article 3 of this Convention shall be allowed by the competent authority in exceptional cases in respect of categories of persons, exactly defined by national laws or regulations, for whom appropriate placing arrangements cannot conveniently be made within the framework of the public employment service, but only after consultation, by appropriate methods, with the organizations of employers and workers concerned.

2. Every fee-charging employment agency for which an exception is allowed under this Article –

(a) shall be subject to the supervision of the competent authority;

(b) shall be required to be in possession of a yearly licence renewable at the discretion of the competent authority;

(c) shall only charge fees and expenses on a scale submitted to and approved by the competent authority or fixed by the said authority;

(d) shall only place or recruit workers abroad if permitted to do so by the competent authority and under conditions determined by the laws or regulations in force.

Article 6

Fee-charging employment agencies not conducted with a view to profit as defined in paragraph 1 (b) of Article 1 –

(a) shall be required to have an authorization from the competent authority and shall be subject to the supervision of the said authority;

(b) shall not make any charge in excess of the scale of charges submitted to and approved by the competent authority or fixed by the said authority, with strict regard to the expenses incurred; and

(c) shall only place or recruit workers abroad if permitted so to do by the competent authority and under conditions determined by the laws or regulations in force.

Article 7

The competent authority shall take the necessary steps to satisfy itself that non-fee-charging employment agencies carry on their operations gratuitously.

Article 8

Appropriate penalties, including the withdrawal when necessary of the licences and authorizations provided for by this Convention, shall be prescribed for any violation of the provisions of this Part of the Convention or of any laws or regulations giving effect to them.

Article 9

There shall be included in the annual reports to be submitted under article 22 of the Constitution of the International Labour Organization all necessary information concerning the exceptions allowed under Article 5, including more particularly information concerning the number of agencies for which such exceptions are allowed and the scope of their activities, the reasons for the exceptions, and the arrangements for supervision by the competent authority of the activities of the agencies concerned.

PART III. REGULATION OF FEE-CHARGING EMPLOYMENT AGENCIES

Article 10

Fee-charging employment agencies conducted with a view to profit as defined in paragraph 1 (a) of Article 1 –

(a) shall be subject to the supervision of the competent authority;

(b) shall be required to be in possession of a yearly licence renewable at the discretion of the competent authority;

(c) shall only charge fees and expenses on a scale submitted to and approved by the competent authority or fixed by the said authority;

(d) shall only place or recruit workers abroad if permitted so to do by the competent authority and under conditions determined by the laws or regulations in force.

Article 11

Fee-charging employment agencies not conducted with a view to profit as defined in paragraph 1 (b) of Article 1 –

(a) shall be required to have an authorization from the competent authority and shall be subject to the supervision of the said authority;

(b) shall not make any charge in excess of the scale of charges submitted to and approved by the competent authority or fixed by the said authority with strict regard to the expenses incurred; and

(c) shall only place or recruit workers abroad if permitted so to do by the competent authority and under conditions determined by the laws or regulations in force.

Article 12

The competent authority shall take the necessary steps to satisfy itself that non-fee-charging employment agencies carry on their operations gratuitously.

Article 13

Appropriate penalties, including the withdrawal when necessary of the licences and authorizations provided for by this Convention, shall be prescribed for any violation of the provisions of this Part of the Convention or of any laws or regulations giving effect to them.

Article 14

There shall be included in the annual reports to be submitted under article 22 of the Constitution of the International Labour Organization all necessary information concerning the arrangements for supervision by the competent authority of the activities of fee-charging employment agencies including more particularly agencies conducted with a view to profit.

PART IV. MISCELLANEOUS PROVISIONS

Article 15

1. In the case of a Member the territory of which includes large areas where, by reason of the sparseness of the population or the stage of development of the area, the competent authority considers it impracticable to enforce the provisions of this Convention, the authority may exempt such areas from the application of this Convention either generally or with such exceptions in respect of particular undertakings or occupations as it thinks fit.

2. Each Member shall indicate in its first annual report upon the application of this Convention submitted under article 22 of the Constitution of the International Labour Organization any areas in respect of which it proposes to have recourse to the provisions of the present Article and shall give the reasons for which it proposes to have recourse thereto; no Member shall, after the date of its first annual report, have recourse to the provisions of the present Article except in respect of areas so indicated.

3. Each Member having recourse to the provisions of the present Article shall indicate in subsequent annual reports any areas in respect of which it renounces the right to have recourse to the provisions of the present Article.

PART V. FINAL PROVISIONS

Articles 16, 17 and 20-25: Standard final provisions.
Articles 18, 19: Declarations of application to non-metropolitan territories.

Appendix IV

LIST OF RATIFICATIONS OF THE FEE-CHARGING EMPLOYMENT AGENCIES CONVENTION (REVISED), 1949 (No. 96)

Date of entry into force: 18.07.1951

STATES	Ratification registered	STATES	Ratification registered
Algeria [1]	19.10.62	Japan [3]	11.06.56
Bangladesh [1]	22.06.72	Libyan Arab Jamahiriya [1]	20.06.62
Belgium [1]	04.07.58	Luxembourg [1]	15.12.58
Bolivia [1]	19.07.54	Malta [3]	09.06.88
Brazil [2]	21.06.57	Mauritania [1]	31.03.64
Costa Rica [1]	02.06.60	Mexico [3]	01.03.91
Côte d'Ivoire [3]	28.07.92	Netherlands [3]	13.02.92
Cuba [1]	03.02.53	Norway [1]	29.06.50
Djibouti [1]	03.08.78	Pakistan [1]	26.05.52
Egypt [1]	26.07.60	Panama [1]	15.07.71
Ethiopia [1]	30.04.91	Poland [1]	25.10.54
Finland [2]	22.12.51	Portugal [3]	07.06.85
France [1]	10.03.53	Senegal [3]	22.10.62
Gabon [1]	13.06.61	Spain [1]	05.05.71
Germany [2]	08.09.54	Sri Lanka [3]	30.04.58
Ghana [1]	21.08.73	Suriname [1]	15.06.76
Guatemala [1]	03.01.53	Swaziland [1]	05.06.81
Ireland [3]	13.06.72	Sweden [2]	18.07.50
Israel [3]	19.06.61	Syrian Arab Republic [1]	07.06.57
Italy [1]	09.01.53	Turkey [3]	23.01.52
		Uruguay [3]	07.07.76

Total of ratifications: 41

[1] Has accepted the provisions of Part II. [2] Has denounced this Convention. [3] Has accepted the provisions of Part III.

Appendix V

LIST OF RATIFICATIONS OF THE EMPLOYMENT SERVICE CONVENTION, 1948 (No. 88)

Date of entry into force: 10.08.1950

STATES	Ratification registered	STATES	Ratification registered
Algeria	19.10.62	Japan	20.10.53
Angola	04.06.76	Kenya	13.01.64
Argentina	24.09.56	Lebanon	01.06.77
Australia	24.12.49	Libyan Arab Jamahiriya	20.06.62
Austria	25.09.73	Luxembourg	03.03.58
Azerbaijan	11.03.93	Malaysia	06.06.74
Bahamas	25.05.76	Malta	04.01.65
Belgium	16.03.53	Mozambique	06.06.77
Belize	15.12.83	Netherlands	07.03.50
Bolivia	31.01.77	New Zealand	03.12.49
Bosnia and Herzegovina	02.06.93	Nicaragua	01.10.81
Brazil	25.04.57	Nigeria	16.06.61
Bulgaria [1]	29.12.49	Norway	04.07.49
Canada	24.08.50	Panama	19.06.70
Central African Republic	09.06.64	Peru	06.04.62
Colombia	31.10.67	Philippines	29.12.53
Costa Rica	02.06.60	Portugal	23.06.72
Cuba	29.04.52	Romania	06.06.73
Cyprus	23.09.60	San Marino	23.05.85
Czech Republic	01.01.93	Sao Tome and Principe	01.06.82
Denmark	30.11.72	Sierra Leone	13.06.61
Djibouti	03.08.78	Singapore	25.10.65
Dominican Republic	22.09.53	Slovakia	01.01.93
Ecuador	26.08.75	Slovenia	29.05.92
Egypt	03.07.54	Spain	30.05.60
Ethiopia	04.06.63	Suriname	15.06.76
Finland	23.11.89	Sweden	25.11.49
France	15.10.52	Switzerland	19.01.52
Germany	22.06.54	Syrian Arab Republic	26.07.60
Ghana	04.04.61	Tanzania, United Republic of (Tanganyika)	30.01.62
Greece	16.06.55	Thailand	26.02.69
Guatemala	13.02.52	Tunisia	11.10.68
Guinea-Bissau	21.02.77	Turkey	14.07.50
India	24.06.59	United Kingdom [1]	10.08.49
Iraq	22.06.51	Venezuela	16.11.64
Ireland	29.10.69	Yugoslavia	23.07.58
Israel	21.08.59	Zaire	16.06.69
Italy [1]	22.10.52		

Total of ratifications: 75

[1] Has denounced this Convention.

Price: 15 Swiss francs

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